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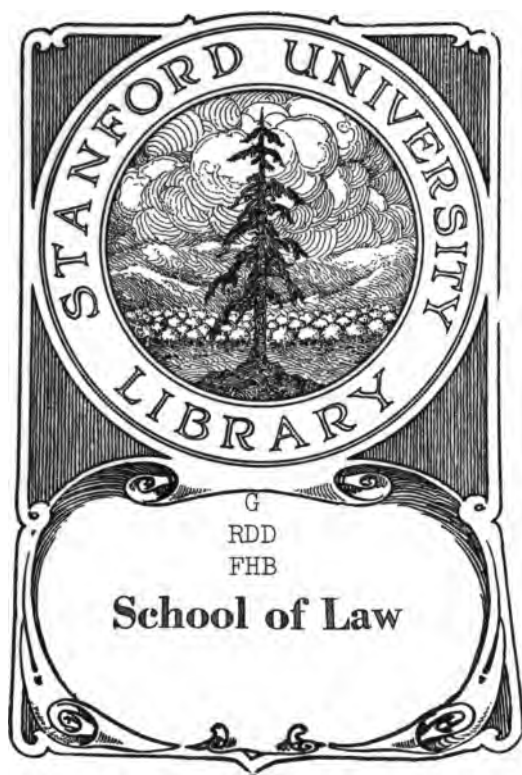
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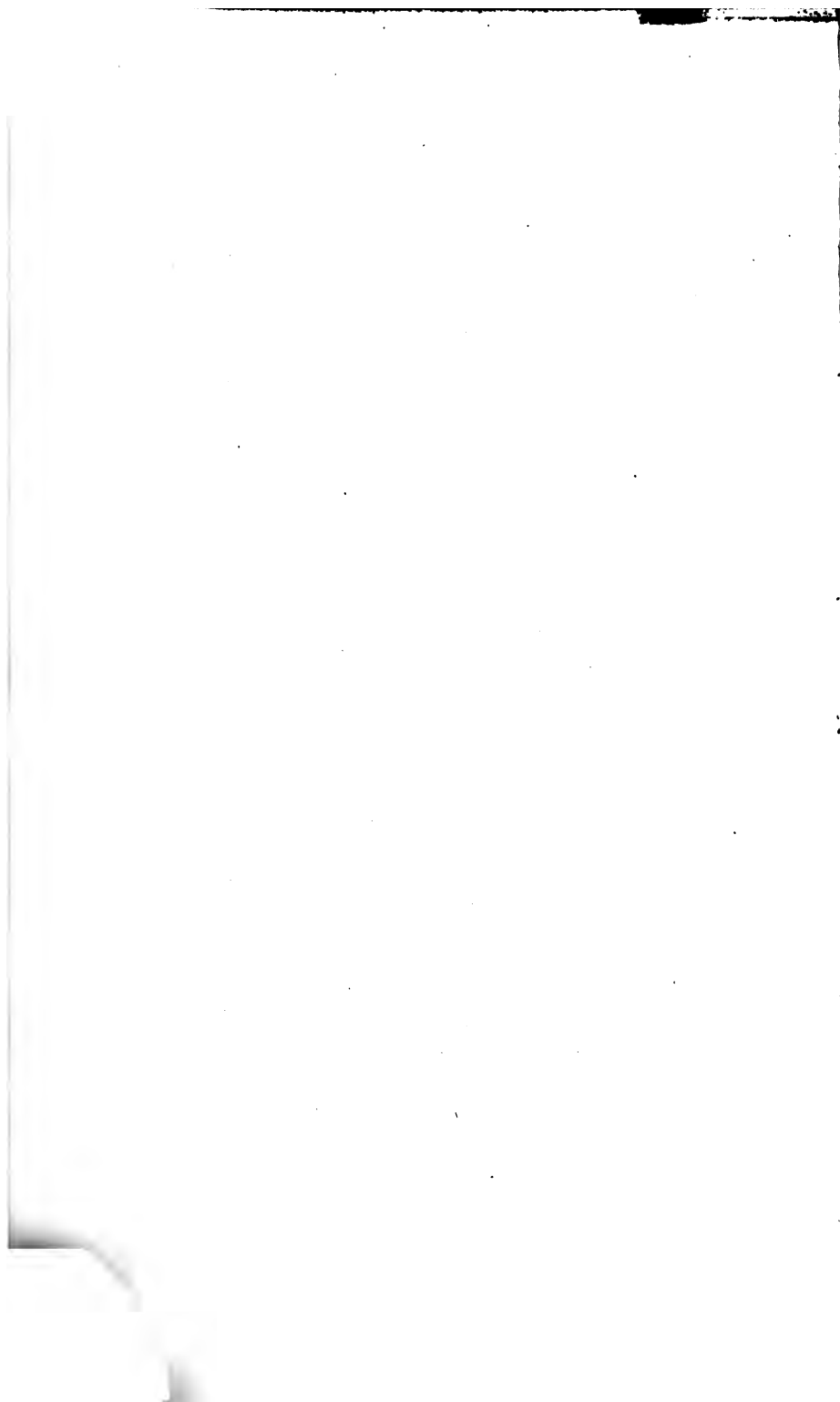
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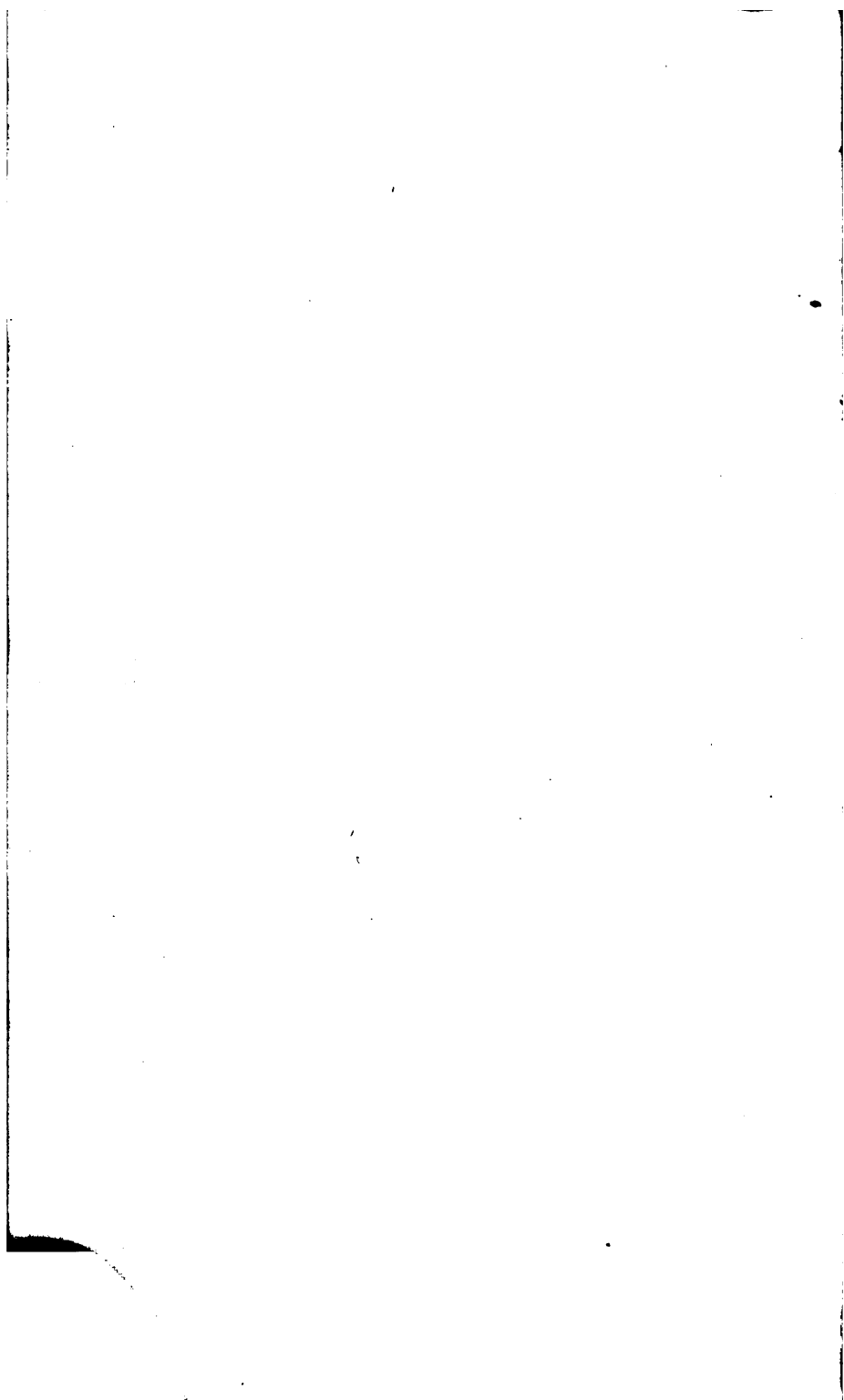
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LELAND STANFORD JUNIOR UNIVERSITY
PAID GERMANY





11648-18596 Wm. White.
(1)
J U D G E M E N T S

IN THE
ADMIRALTY OF PENNSYLVANIA
IN FOUR SUITS,
BROUGHT AS FOR
MARITIME HYPOTHECATIONS.

ALSO,
THE CASE OF
S I L A S T A L B O T,
AGAINST
THE BRIGS ACHILLES, PATTY, AND HIBERNIA,
AND OF
THE OWNERS OF THE HIBERNIA
AGAINST
THEIR CAPTAIN, JOHN ANGUS.

WITH AN APPENDIX, CONTAINING THE TESTIMONY EXHIBITED IN THE ADMIRALTY IN THOSE CAUSES.

THE HON. FRANCIS HOPKINSON JUDGE.

P H I L A D E L P H I A :

PRINTED BY T. DOBSON AND T. LANG, IN SECOND STREET,

M D C C L X X I X .

U.M. Stone

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P R E F A C E.

TH E following pages contain the Judgements given in the Court of Admiralty of this commonwealth in four suits, brought on maritime hypothecations.

As the rules of law, by which a captain of a vessel is empower'd to impawn his owner's ship or goods for necessaries in a foreign port, are nice and precise, it was thought it might be of use, both to captains and owners, to see a judicial statement of a law doctrine, in which their interests are, or may be, very deeply concerned.

To

To these are added, the case of SILAS TALBOT, with the suits and pleas to which that case gave rise. As these also respect the nature of the connection subsisting between owners and their captains in the eye of the law, their publication may be of some use to merchants and masters of vessels.

SOME difference in opinions having arose in these cases, it was thought proper to give, in an Appendix, copies of the depositions exhibited in the Admiralty, that the reader might have before him the sources from which the decisions in those causes were derived.

PHILAD. Feb. 1789.

LIEBART, BAES, DUR-
DEYN & Co.

against

The SHIP EMPEROR.

JUDGEMENT.

THIS is a suit brought on a Bottomry Bond given by John Walsh to the libellants at *Ostend*, whereby he hypothecates the ship *Emperor*, of which he was then the captain, for 4500 Florins, equal to £.409 - 1 - 9 sterling money of Great Britain, advanced for repairs of the said ship. Whereupon James Oellers the owner of this ship, and others his assignees, come in and answer to the libel, alledging that this Bottomry Bond

B

ought

ought not to take effect *as an hypothecation, according to the maritime law.*

THE power vested in a master of a vessel to impawn his owner's ship or goods for necessities furnished in a foreign port, is a legal indulgence founded on the urgency of the case, and for the general benefit of commerce.

THERE are few rules of law more strictly defined than this of HYPOTHECATION, and none in which the reason and intention of the law are more manifest—It is thus delineated :

“ A MASTER of a ship hath no power
 “ to take up money by bottomry, in
 “ places where his owner or owners
 “ dwell ”—“ But when a master is out
 “ of the country, and where he hath no
 “ owners, nor any goods of their's, nor
 “ of his own, and cannot find means to
 “ take up by exchange or otherwise, and
 “ that for want of money the voyage
 “ might be retarded or overthrown,
 “ monies may be taken up upon bot-
 “ tomry.”—*Molloy*, Book II, chap. 11.
 sect.

lect. 11.—“ And the money so taken up
 “ by the master, is done upon great ex-
 “ tremity, and that for the completing
 “ of the voyage, when they are in dif-
 “ tress and want in some foreign parts.”

—Sect. 12.

ALL the books agree in the spirit of this doctrine. The extreme necessity appears, every where, to be the *reason* of the law, and the *intention*, to favour commerce.

LET us now take a view of the circumstances of the present case:

THE leading facts appear, from the testimony exhibited, to be these.

THE ship Emperor, *John Walsli* master, belonging to *James Oellers* of Philadelphia, sailed for Ostend with a cargo of tobacco on board; the ship and cargo being consigned by the owner to *Bine, Overman, and Company*, merchants at *Ostend*. This ship was so damaged by a storm at sea, that the captain was obliged to put into the port of Dover, in
 England,

England, in distress. The captain, on his arrival at Dover, immediately sent notice of his situation to the consignees at Ostend, and they speedily furnished him with a credit on London, from which he raised money sufficient to refit his ship. After this, he sailed for and arrived at *Ostend*, where the consignees took charge of the ship and cargo.

BEFORE the vessel arrived at *Ostend*, Bine, Overman and Company had accepted bills, to a considerable amount, drawn upon them by Oellers, on the credit of this consignment. Upon closing all accounts, Bine, Overman and Company found that Oellers had not only drawn upon them to the full amount of the cargo and freight ("the tobacco not selling so well as was expected"), but that there remained a considerable balance in their favour. To secure this balance, they tell captain Walsh that he shall not leave the port, and even threaten to attach the ship, unless he will repay them the monies advanced at Dover for repairs, or hypothecate the ship for security.

ity. It was not in captain Walsh's power to do the one, that is, to repay the money; and he declined the other proposal for some time. But finding expences accumulating, and that he could not sail without some accommodation, he at last consented to Hypothecate the ship. Bine, Overman and Company then recommended him to Liebart, Baes, Durdyn, and Co. telling him that they would lend money on bottomry; and conducted him to their house, where he executed the bottomry bond, now in question. But no money was paid to Walsh; for the bills for repairs, for which the ship was hypothecated, had long since been discharged by the produce of the credit on London.

After this, Bine, Overman and Company permitted captain Walsh to sail, and in due time he arrived in the port of Philadelphia.

DURING these transactions, Oellers had failed, and assigned this ship to his creditors, and the question now is, Whether this bottomry bond shall operate to the

the exclusive security of the merchants at Ostend against all other creditors, as a genuine hypothecation would do, on the principles of maritime law.

AFTER a careful consideration of these circumstances, I cannot discover one real feature of that rule of law which should be the ground of the present suit. True it is that the ship was in necessity, and so is every ship that wants essential repairs. But the owner had credit within reach. The consignees were not far distant. The application was easy and certain, and the consignees no sooner heard of the disaster but they furnished the means of relief. In fact, Bine, Overman and Company had the strongest inducements to exert themselves in getting the ship repaired at Dover, to enable her to get round to Ostend, for they had made themselves answerable for Oeller's bills, upon the credit of this cargo; it was, therefore, of great importance to them that the cargo should arrive safe to their hands. So that, instead of advancing money

money to a distressed stranger, they were only taking care of their own security. This motive is manifested by their letter to Walsh at Dover, and still further by their subsequent conduct ; for, after they had disposed of the cargo, and found a balance due from Oellers to them, they insist that Walsh shall not sail unless he will hypothecate the ship to Liebart, Baes, Durdeyn and Co. which, from all appearances, seems to be the same thing as hypothecating her to themselves. For the captain received no money from Liebart, Baes, Durdeyn and Co. who were not at all interested in the transaction, and whose names were only made use of to save appearances ; for Bine, Overman and Company well knew that, being consignees, the captain had no power to hypothecate the vessel to them. And, in order to give the bottomry bond the appearance of a genuine hypothecation, they select from the general account the monies spent in repairs at Dover, and compel the captain to hypothecate the ship, *as for those particular*

icular charges, to the libellants, who had not advanced one shilling towards that expence.

FURTHER, If we look into the accounts we shall find, that although this voyage was not a very successful one, yet the ship cleared all charges accrued since she sailed from Philadelphia, even including the repairs at Dover. But Oellers had drawn upon Bine, Overman and Company on the credit of the future voyage, long before the vessel sailed from Philadelphia, to raise money to fit her out, and it is these drafts brought into account which make a balance due to the consignees. So that, instead of an hypothecation made to enable a ship to complete her voyage, it was, in fact, made to enable her owner to begin one. Which was never the object of the maritime law in cases of hypothecation. Neither was this law ever designed to give partial advantages in mercantile connections, or intended to secure the balance of a running account between owners and consignees.

THE

THE importance of the present decision to the commercial character of our country, has been strongly urged, in favour of the libellants. But I am not apprehensive on this account. The question in view is not to be determined by any municipal law of the country, but by a general law, universally received and understood. And I am of opinion, that our national character would much more suffer by an adjudg'd precedent, which might open a door for dangerous collusions, by putting it in the power of captains of vessels to saddle their owners with unnecessary engagements, or to give an unfair advantage to foreign creditors, by a fraudulent use of that pre-eminent lien which the law lays on a ship and goods properly hypothecated.

I do not mean to suggest that there has been any fraud or collusion in the present case. It is enough that I do not find the claim of the libellants within the spirit or intention of the maritime law.

AND, therefore, I adjudge that the bill be dismis'd, and that the libellants pay the costs of suit.

July, 1785.

FROM this decision there was an Appeal to the High Court of Errors and Appeals. The cause was again argued there, but the judgment of the Court of Admiralty was confirmed.

THE following notes, taken at the time, contain the substance of the judgment given in the High Court of Errors and Appeals in the above cause.

October 3, 1785.

THE Court observed,—That the power of a master to hypothecate his owner's ship was a necessary, but sometimes a dangerous power—the Court was unwilling to extend this power farther than the law strictly authorised—A genuine

nune hypothecation ought to be the voluntary act of the master at the time when, and in the place where, the monies were advanced for necessities or repairs—The money advanced ought to be solely on the faith of the hypothecation, and not on any personal credit.—These are incontrovertible principles—the present case not applicable to them. Although the hypothecation was made to Liebart, Baes, Durdeyn and Company, yet it was to secure monies advanced by Bine, Overman and Company, the consignees—No authority shewn, and none can be shewn, because none ought to be, that an hypothecation can be made to a consignee—great mischiefs might arise if captains could hypothecate to consignees—No authority produced to prove that an hypothecation can be made in any port but that in which the vessel first arrives after the distress and damage sustained—Bine, Overman and Company did not repair the vessel on the faith of the hypothecation—but this hypothecation was made to
 secure

(16)

secure to consignees the balance of a running account.

THE Court unanimous in confirming the sentence of the Admiralty.



TURNBULL & OTHERS,

against

The Ship ENTERPRIZE.

JUDGEMENT.

THE bill in this cause is filed by certain merchants against the ship Enterprize, for the recovery of monies advanced by them to the captain of the said ship, in the port of Philadelphia, to fit her out for an intended voyage; the ostensible or real owners, or some of them, being, at the time of such advancements, within the State, and known to the libellants.

AND it has been urged in support of the libel, That every contract of the captain,

captain, for necessaries for a ship, implies an hypothecation, and induces a lien on the ship in favour of the creditor, ~~enforceable in the Admiralty by the rules of~~ civil law. And the case principally relied upon as authority for this doctrine, is cited from *Cowper*, page 636.

THE case referred to is a suit at common law, brought by a ropemaker, against the owners of a ship, for ropes furnished to the captain. The plaintiff, having charged *Harwood*, (the captain) and the owners of the ship for the ropes, without naming or knowing who the owners were. The fact was, that the owners, according to the custom of the county of Essex, in England, where they probably resided, had leased the ship to *Harwood* for a term of years, on certain conditions : and the questions were, Whether, under these circumstances, *Harwood* was not both captain and owner, during the term ? and Whether the original owners ought to be responsible for debts contracted on account of the ship whilst

whilst in the possession of Harwood, under the lease?

LORD Mansfield was of opinion, that neither the lease, nor the ignorance of the creditor as to the names or persons of the owners, could exonerate them. And to shew that the owners are bound, he says—"Suppose the ship had been impounded in the Admiralty, and *that* had happened at the end of the term, the owners could not have had their ship, without paying the debt for which she had been impounded."

BUT this case is brought into view chiefly because lord Mansfield, in giving his opinion, observes—that the creditor had three securities for his debt, viz. the person of the captain with whom he contracted, the *specific ship*, and the owners.

IT should be remember'd, however, that this was a suit at common law: that the owners, the ship, the captain, the creditor, and the contract, were all within the realm—and there can be no doubt but that the creditor might have
his

his action at law either against the persons of the contractors, or might attach their property, the ship, for his debt.

BUT this case has no reference whatever to the maritime or civil law. The doctrine of hypothecation is never once mentioned, nor is the contract of the captain at all placed upon that ground. The principal object was, to determine whether the lease of the ship did not exonerate the lessors during the term.

So, in the case cited from *Wesey*, page 154. This also was purely a common law process; wherein the parties and the whole transaction appear to have been *infra corpus comitatus*. "Certainly," says the lord chancellor, "by the maritime law the master has power to hypothecate the ship *during the voyage*, and *from the necessity of the case*; but it is different where the ship is *infra corpus comitatus*, and the contract made by the owners or master on land, and not arising from necessity—then, the laws of the land must prevail."—And this is clearly consonant with

with the whole current of authorities respecting the doctrine of hypothecation, viz. that it must be made during the voyage, and from the necessity of the case.

WHEN money is borrowed on the ship, before the voyage begun, the ship is not answerable in the Admiralty, 1st *Raym.* 578.—So, in 2d *Raym.* 982, in the case of *Johnson v. Shippen*, chief justice Holt says—“ If a ship be hypothecated
“ before a voyage begun, *that* is not a
“ matter within the jurisdiction of the
“ Admiralty ; for it is a contract made
“ here, and the owners can give security to perform the contract.”

It appears, then, to be a settled doctrine, that a ship cannot be hypothecated, according to the maritime law, before the voyage is begun, or in places where the owners reside, even for those necessities, without which the ship could not proceed to sea. The law means to favour the completion, not the commencement of a voyage.

FOR this reason, the legislature of Pennsylvania

sylvania hath, *by a special act*, given to the artificers who build or repair, and to those who furnish necessaries to fit out a ship for sea, a lien upon the vessel, sueable in the Admiralty, before the voyage is begun, because the maritime law does not extend to their security.

SINCE, then, it appears that the advance of monies to fit out the ship *Enterprize*, was made before the commencement of her voyage, and not from necessity ; and that the captain, the owners, or some of them, and the contractors, were all within the State at the time of the transaction ; and as the suit is not brought under the act of assembly of the 27th of March, 1784, I cannot admit this case to be of admiralty jurisdiction, and, therefore, I adjudge that the bill be dismiss'd, and that the libellants pay the costs of suit.

August, 1785.



EDWARD FORBES,

against

The Brig HANNAH.

ANDREW HODGE *Respondent.*

JUDGEMENT.

EDWARD FORBES of Dublin, in Ireland, has libell'd against the brig Hannah for the amount of certain bonds of bottomry, which *Francis Lewis*, then captain and principal owner of the vessel, gave as security for monies advanced by *Forbes*, in the port of Dublin, for necessaries, as it is said, for the said brig, and to enable her to complete her voyage.

THE

THE circumstances of this case appear, from the testimony, to be as follows.

FRANCIS LEWIS, principal owner of the brig *Hannah*, had charter'd her to one *Varlo*, for a voyage from America to Dublin. *Varlo* himself went passenger, with his goods, and *Lewis* was captain for the voyage. After their arrival at Dublin, *Lewis* borrowed money of *Forbes* at three several times ; for which he gave three bonds of bottomry on his vessel, amounting, with premium and charges, to £.214 - 0 - 8 sterling money of Great Britain. *Forbes* then put a cargo on board the brig, in which it seems that *Lewis* was concerned ; as he was to have one half of the nett profits of the adventure, exclusive of freight, and to be answerable for one half of the loss, if any there should be, on the sales.—*Lewis* left Dublin with this cargo, bound for the city of Boston, in America. But it does not appear by the exhibits, whether he ever arrived at Boston, or what he did with the cargo. It appears, however,

ever, that in April last he was with this brig in the port of Philadelphia, at which time his mariners sued in this Court for wages due, and the brig was thereupon attached and condemn'd for payment of wages, amounting to £29—*Lewis* making no plea or defence against the libel. In consequence of this sentence, a writ issued to the marshal, in the usual form, directing him to sell the brig *Hannah*, with her tackle, apparel and furniture, *or such parts thereof*, as might be necessary to satisfy the decree in favour of the mariners, together with the costs and charges of suit. But *Lewis* requested the marshal to sell *the whole* of the vessel, with her tackle, &c. under the decree, and even indorsed this request upon the writ of sale: and to prove that he was the sole owner of the brig at that time, he exhibited to and lodg'd with the marshal, an assignment, or bill of sale, from one *Simpson*, who had been a part owner, of all his interest in the brig to *Lewis*. ANDREW HODGE, the respondent in the present cause, purchased this vessel at the

the marshal's sale, and paid down the full consideration money, out of which the marshal deducted the mariner's wages and costs of suit, and paid the balance to *Lewis*, as sole owner. After this, *Lewis* went off without saying any thing of the bottomry bonds he had given to *Forbes* in Dublin. And now these bonds have come over, and *Forbes* has attached the brig in the hands of *Hodge*, the purchaser.

FROM these circumstances, two questions have arisen, viz.

FIRST. Whether these bottomry bonds have hypothecated the vessel, according to the rules of maritime law, so as to bring the cause within Admiralty jurisdiction?

SECONDLY. Supposing it to be so, whether the sale and purchase, under the authority of this Court, have not vested the property in the respondent, exonerated of all prior engagements?

To determine the first point, it will be necessary to consider the characteris-
tic

tic marks which distinguish an hypothecation according to the maritime law, from a common bottomry bond or mortgage on a ship, according to the custom of merchants, and cognisable by the common law.

By the maritime law—" a master of a
 " ship hath no power to take up money
 " by bottomry, in places where his own-
 " ers dwell : but when he is out of the
 " country and where he hath no own-
 " ers, or any goods of their's or his own,
 " and cannot find means to take up by
 " exchange or otherwise, and that for
 " want of money the voyage might be
 " retarded or overthrown, monies may
 " be taken up upon bottomry."—*Molloy*,
 Book II. chap. 11. sect. 11. From this it
 appears, that the true grounds of a ma-
 ritime hypothecation are, the *necessities* of
 the case, and the *want of personal credit*.
 Wherever this doctrine occurs in the
 books, these two circumstances are strong-
 ly pointed out. Thus, in 3d *Mod.* 244,
 " The reason of the civil law, which al-
 " lows the pawning of a ship for neces-
 " saries

“ faries upon the high sea, seems to be
 “ plain ; because there may be an extra-
 “ ordinary and invincible necessity—to
 “ which the admiralty jurisdiction is li-
 “ mited—for, if the law should be other-
 “ wise, the master might take as much
 “ money as he will.”—And so the Court,
 in that case, ordered a trial *on the neces-*
sity.

So also in *Bridgeman's case*, *Hob.* 12,
 a prohibition was granted, because the
 impawning was not shewn to be *occasion-*
ed by necessity. In 1st *Magens*, there is a
 report of an admiralty suit on a bottom-
 ry bond—at the conclusion, page 329,
 the author says—“ Persons living in sea
 “ ports may learn from this case, not to
 “ believe or trust too easily a captain
 “ they do not know ; and when they
 “ propose benefiting themselves by lend-
 “ ing money on bottomry, to such whose
 “ distresses oblige them to seek it: the
 “ lenders, for their own satisfaction and
 “ security, ought to have proofs given
 “ *that there was a necessity for such an ad-*
 “ *vance,*

“ *vance*, and that the money had actually been employed for the purposes alleged.”

FURTHER, the impawning must be in foreign parts—that is, where neither the owner, nor master, hath any personal credit. For, this constitutes an essential part of the necessity.—“ The master can have no credit abroad, but by hypothecation.”—*Salk.* 35. “ Where a ship in distress is forced into any port where her owners have no correspondents to supply the master with the money necessary to enable him to prosecute his voyage, he may take it on bottomry from those who will advance it on the easiest terms.”—1st *Mag.* 27.

THE reason is, the maritime law requires that the monies should be lent solely on the credit of the ship ; and that the security of the lender should depend altogether on her safety ; and therefore if the ship be well engaged, that is, according to the principles stated, she shall be forever obliged 'till redemption.—*Molloy*, Book II. chap. 2. sect. 15. And

therefore, also, because of the hazard, an unusual interest or premium is allowed on the monies advanced.

SUCH are the principles which designate a maritime hypothecation within admiralty jurisdiction.

BUT bottomry bonds may be given by owners for security of mercantile or other debts; and these may be executed either in the places where the owners dwell, or in foreign parts by their order. They may be formed under a variety of circumstances, and depend on many contingencies, according to the conditions or terms of the deed or contract.

IT should seem, by *the necessity* so frequently urged as the ground of a maritime hypothecation, that the ship should be driven by distress into some other port than that of her destination; or, at least, that some extraordinary casualty should occasion an unforeseen and inevitable expence in the port of her voyage. Because, it is hardly to be supposed that an owner would send his ship, much less
that

that he would take her himself, to a place where he could not command either money or credit for ordinary repairs and supplies.

IN the present case, it does not appear, nor has it ever been suggested, that any extraordinary circumstances occasioned an unforeseen necessity. The captain (*Lewis*), who was also principal owner, arrives after a prosperous voyage at the port of destination, with his freighter on board. Here the voyage is completed, and it may be presumed that he then received his freight. If so, he could not be without money sufficient to refit his vessel for a new voyage. And that he was not without personal credit is manifest; because *Forbes* entrusted him with a new cargo, and agreed to allow him 35*s.* Irish money per ton for freight, on all the goods he should deliver; and also, one half of the nett profits arising from the sale of the cargo, he to run one half of the risk of loss. This mercantile connection shews, at least, that *Lewis* was in some credit with *Forbes*.

BESIDES,

BESIDES, if we look into the accounts, we shall find that the first article charged is for £.32 - 5 - 6 sterling paid to Mr. *Varlo* by *Lewis's* order, to take up and cancel a former bottomry bond. It seems strange that *Lewis*, after navigating *Varlo* and his goods across the sea, should fall in his debt—this circumstance is not at all accounted for—but, be it as it may, *Forbes* should certainly have forwarded this former bottomry bond, with an account of the occasion and expenditures for which it was given, that a judgment might have been formed whether it was a proper hypothecation or not; or have shewn that the brig was under condemnation of the admiralty at Dublin on account of that bond, and that the £.32.5-6 was paid for her redemption.

UPON a view of the circumstances of the present case, I do not find them such as the maritime law requires, to constitute a genuine hypothecation, within admiralty jurisdiction. This point being conclusive, it is unnecessary to determine on the second general question.

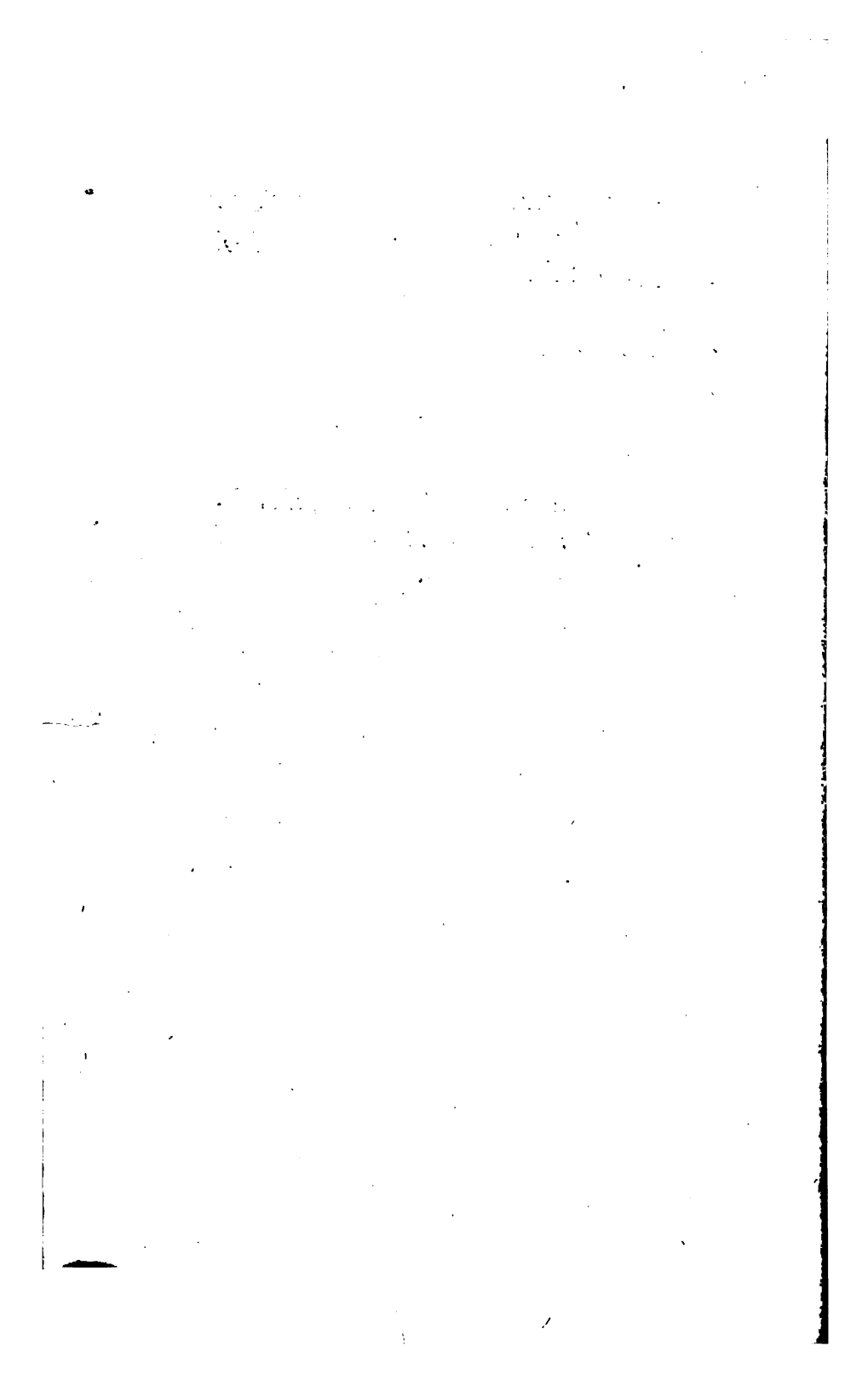
I AD-

I ADJUDGE that the bill in this cause be dismiss'd, and that the libellants pay the costs of suit.

August, 1786.

THERE was an appeal from this decree ; but the High Court of Errors and Appeals confirmed the sentence.





MANUEL SAGAS DE
CANIZARES,

against

The Brigantine SANTISSI-
MA TRINIDAD.

JUAN JOSEPH DE AGUIRE PEREZ, *Own-
er and Respondent.*

HYPOTHECATION AND MARINER'S WAGES.

JUDGEMENT.

THE libel filed in this cause is in
the words following—

“ To the honorable FRANCIS HOP-
KINSON, esquire, Judge of the
Court of Admiralty of the state
of Pennsylvania ;

“ THE bill of Manuel Sagas de Cani-
zares respectfully sheweth—That Don
Juan

Juan Joseph de Aguire Perez, of the city of Cadiz, in the kingdom of old Spain, now resident in the city of Philadelphia, was and is owner of a certain brigantine called the Santissima Trinidad ; and that Narisco Sanchez y Serna was commander of the said brigantine, being thereto properly authorized and appointed—the said brigantine being of the burthen of 120 tons, or thereabouts. That the said Narisco Sanchez y Serna, being on the high seas and within the jurisdiction of this court, viz. at the Havannah, in the island of Cuba, was under the necessity of taking up money on the freight and property of the said brigantine—the said brigantine having suffered by storms and tempests on the high seas, and the crew of the said brigantine being in want of provisions. In consequence whereof, and from the prolongation of the voyage thereby occasioned, the said Narisco Sanchez y Serna did then and there, upon the high seas, and within the jurisdiction of this court, borrow from Santiago Cupisno the sum of 200 Mexican

can dollars, equal to the sum of £.75 lawful money of Pennsylvania ; in consideration whereof, the said Narisco Sanchez y Serna did, on the 6th day of June, 1788, on the high seas, and within the jurisdiction of this court, by a certain writing, with the proper hand of the said Narisco Sanchez y Serna, then captain, thereto subscribed, (which said writing is here exhibited to this court) contract, covenant and agree with the said Santiago Cupifono, and to him did hypothecate the said brigantine, and her freight, in the words following, viz.

[*The contract, in the Spanish language.*]

The meaning and purport of which words are as follows, to wit,

“ RECEIVED of Mr. Santiago Cupifono
 “ no the sum of two hundred dollars,
 “ current money of Mexico, for the vic-
 “ tualling and first expences of the bri-
 “ gantine, which sum I will pay at first
 “ sight, in the name of the owner Don
 “ Juan Joseph de Aguire Perez, who is
 “ in Philadelphia : which cash I receive,
 “ mortgag-

“ mortgaging the freight, the brigantine
“ and her rigging, as the said Santiago
“ Cupifono has lent me the above sum
“ for the advantage of the vessel at Ha-
“ vannah.

“ June 6th, 1788.

“ NARISCO SANCHEZ Y SERNA.”

“ AND afterwards, to wit, on the 13th
day of August, in the year of our Lord
last aforesaid, the said Santiago Cupifo-
no, by his endorsement on the said writ-
ing,* with his proper hand thereto sub-
scribed, did order the contents to be paid
to your libellant.

“ AND your libellant in fact says, that
the said brigantine did arrive safely from
the port of Havannah to the port of Phi-
ladelphia on the 12th day of October in
the present year. And the said Narisco
Sanchez y Serna, the said captain, did
not,

* *Translation of the Endorsement.*

“ FOR me, pay to the order of Manuel Segas de Ca-
“ nizares, the above expressed sum, for value received
“ of him.

“ Havannah, Aug. 13th, 1788.

“ SANTIAGO CUPISONO.”

not, neither did the said Don Juan Joseph de Aguire Perez, owner of the same brigantine, pay, or cause to be paid, to your libellant, the said sum of 200 dollars, or any part thereof, which, according to the true intent and meaning of the said writings, so as aforesaid exhibited, the said Narisco Sanchez y Serna and the said Don Juan Joseph de Aguire Perez ought to have paid to your libellant ; although your libellant hath demanded the said sum both from the same Narisco Sanchez y Serna, the captain, and the said Don Juan Joseph de Aguire Perez, the owner, at Philadelphia aforesaid.

“ AND your libellant begs leave further to represent, that your libellant is an able seaman and pilot, well acquainted with the several harbours in the island of Cuba and on the continent of North America, and, as such, was shipped on board the brigantine Santissima Trinidad at Havannah, by Narisco Sanchez y Serna, now or late captain, master and commander of the said brigantine, at the monthly wages in the account hereunto annexed,

ed,* mentioned ; to sail from the said port of Havannah to the port of Philadelphia ; and that it was stipulated by and between the said captain and your libellant, that in case the owners of the said brigantine should think proper to discharge your libellant at the port of Philadelphia, in such case, your libellant should receive three months wages, and be furnished with a passage back to the said

** The Account annexed to the libel.*

The Brigantine Santissima Trinidad,
1788. To Manuel Sagas de Canizares, Dr.
Dec. 19.

To cash lent in Havannah to captain Narisco Sanchez y Serna, commander of the said brigantine, by Santiago Cupifono,	-	£.75	0	0
To 5 months and 19 days wages, from July 1st to Dec. 19th, at £.7 10	-	-	42	5 0
To 3 months pay, agreeable to contract,	-	-	22	10 0
To his passage to Havannah,	-	-	22	10 0
			162	5 0
Received in Havannah 2 months advance,	-	-	15	0 0
			147	5 0
To 1 month's boarding Mr. Canizares has been obliged to find,	-	-	5	12 6

saïd port of Havannah.* That the saïd brigantine did accordingly sail from the port of Havannah and arrive at the port of Philadelphia, and your libellant continued on board the saïd brigantine during all the saïd voyage, and did his duty as

** Translation of the Agreement.*

THE Commandant General of the navy, and the Intendant General, &c. having both obliged me to take, as all other vessels do, a second pilot, as by order of His Majesty no vessel, small or great, can leave his dominions without having on board a first and second pilot. In consequence whereof, in the name of the owners, I have fought for Don Manuel Sagas de Canizares, second pilot of the navigation of Indies, and captain and first pilot in the French navy, as he has proved by his papers exhibited to the saïd Intendant, in whose presence, treating of his wages, after having enquired of several other persons, found it more convenient and cheaper to pay him twenty dollars current money of America per month. And in case the owners think proper to suspend these commissions, they shall bring him back to this port of Havannah, paying him, above his wages, three months besides his passage, as the decency of his office requires it. And in all the ports where the saïd vessel shall go, he shall receive the half of the daily allowance of a first pilot, which is seven reals and $\frac{3}{4}$ current money, and for a second pilot 4 reals ; or in case he does not receive provisions, &c. agreeably to the ordinances of Bilboa and the regulations of

as a seaman and a pilot aforesaid, until the said vessel arrived at the port of Philadelphia, and your libellant was discharged from doing any more duty on board the said brigantine by the captain and owner thereof. And altho' your libellant hath requested the said captain and the said owner to pay him three months wages and to furnish him with a passage back to the Havannah, according to the agreement aforesaid, yet the said captain and owner have hitherto refused, and still do refuse, to do the same.

“ WHERE-

of the navy—and in case this present agreement should not be complied with, he shall present it to the Minister, that he may oblige them to pay what is hereby promised. Two to be written of the same tenor ; one for the warranty of Don Juan Joseph de Aguire Perez, to be signed in his name by the captain of his vessel, and another in the same manner to be left, as the original, in the naval office, with the commissary Mr. Domingo Labadores, each having the same strength, as if they had been made and executed before a Notary Public at Havannah.

July 1st, 1788. NARISCO SANCHEZ Y SERNA.

MANUEL SAGAS DE CANIZARES.

Received in advance Forty Dollars.

MANUEL SAGAS DE CANIZARES,

“ WHEREFORE, your libellant prays, that the process of this honourable court may issue against the said brigantine, and that she may be condemned by a sentence and decree of this honourable court, and that the said brigantine may be sold, and the money arising from such sale may be applied to the payment of the said several sums due to your libellant.—And your libellant shall ever pray, &c.

“ Dec. 19, 1788.”

THIS libel states two separate claims of Canizares, the complainant, against the brigantine Santissima Trinidad. The *one* founded on an hypothecation of the said vessel, made by the then captain to Santiago Cupifono at Havannah, for 200 dollars advanced by the said Cupifono for necessaries for the said brigantine, as it is said, and to enable her to prosecute her voyage; which instrument of hypothecation is endorsed or assigned over by the lender to the present libellant: and the *other*, founded on a written contract
between

between the said Narisco Sanchez y Ser-
na, then captain, and Canizares, the li-
bellant, made at Havannah, respecting
the wages he should receive for serving
as pilot and mariner on board the said
brigantine, in her voyage from Havan-
nah to Philadelphia. As these claims
arise from different contracts, it is mani-
fest that they must be separately con-
sider'd.

To determine on the force of this in-
strument of bottomry, I shall first state
the circumstances necessary to the forma-
tion of a genuine hypothecation, accord-
ing to the maritime law ; and then take a
view of the history of this vessel's voy-
age, and her situation at the Havannah,
when Cupisno advanced the money in
question.

As to the first, I have had occasion, in
three former suits in this court, to state
the doctrine respecting a maritime hypo-
thecation, and have not since found rea-
son to alter my opinion of the principles
on which these causes were decided.—
The cases to which I refer were, Liebart,
Baes,

Baes, Durdeyn and Co. against the ship Emperor, Turnbull against the ship Enterprize, and Forbes against the brig Hannah. The first and third of these causes were carried into the High Court of Errors and Appeals, were there again solemnly argued and considered, and, without the intervention of any new testimony to alter the case, the sentences of the Admiralty were confirmed on the same, or nearly the same, principles. I can only now repeat the substance of what was then observed.

[Here the Judge recapitulated the doctrines advanced, and the authorities cited in the three foregoing causes, and then proceeded to say]

I SHALL now state the history of the voyage of this brigantine, as the same may be deduced from the testimony exhibited.*

G

IT

* THERE was but one deposition produced in this cause, viz. that of the late captain of the brig. It might have been a question, whether his testimony was legally admissible or not, but he was not objected to as a witness by the proctors for either side.—His deposition was in these words :

“ NARISCO

It appears, that this vessel was chartered on account of the king of Spain, and was to sail from Philadelphia with a cargo of flour for Carthagena—that the
flour

“ NARISCO SANCHEZ Y SERNA, a witness produced on the part of the libellant in this cause, on his solemn oath on the holy Evangelists of Almighty God, saith—That he, this deponent, received the 200 dollars mentioned in the libel (he being then captain of the said brigantine at the Havannah) of Cupifono, by the hands of the libellant ; which money, or any part thereof, he, the deponent, hath not paid to Cupifono again ; and that he employed the said money in paying wages to the crew and in furnishing fresh provisions, until he should receive money from the Intendant.—That a survey was ordered upon the vessel, and a report made to the Intendant, and he then received a verbal order to take his vessel from the bay to the upper part of the harbour, where the king’s warehouses are, there to discharge, and after that to transport his vessel to the king’s arsenal, where she was repaired and had a new bottom.—That he, the deponent, had no money, nor any person to whom he could apply to obtain the same.—That the vessel leaked before he went into the Havannah to such a degree, as to make more than 30 inches of water in an hour.—That he never knew Mr. Cupifono ; but he had *had* three or four days acquaintance with the libellant.—That he requested the libellant to borrow him some money, and he took him to Mr. Cupifono’s, where the money was paid to him.—That the paper marked A, exhibited in this cause and shewn to him,

flour was there to be sold, and a cargo of dye-wood purchased and brought back to Philadelphia, or some port of the United States. Such was the designated

him, is a contract made between the libellant and the deponent.—That at the house of Cupifono, the said Cupifono insisted upon the vessel and freight being hypothecated to him, otherwise he would not lend the money.—That Cupifono knew that the vessel put in in distress—that every body knew it, and that he, the deponent, had told Cupifono of it.

“ BEING cross-examined, he saith—That the sailing orders (marked B) are the sailing orders he received.—That the paper (marked C) is the charter party signed between him and the freighter.—That the paper (marked D) is the account delivered by the deponent, on his return, to his owners. Being asked how he came to apply to the Intendant for money, he saith, That he presented a memorial to him for that purpose. Being asked whether he got any money in consequence of the memorial, he says, That he did not; but he was obliged to present five or six memorials. Being asked, how long after he arrived at the Havannah he presented a memorial, he answers, That he received the money from Cupifono the first Sunday after his arrival. Being asked on what day he arrived at the Havannah, he answers, That he does not remember whether it was on Thursday or Wednesday—that the memorial was presented to the Intendant after the money was received from Cupifono.—That in the conversation he had with Cupifono, he told him that he expected to receive

nated voyage. But, it seems, the captain, instead of returning to Philadelphia from Carthagena, went to Jamaica with an adventure of his own; to what amount

ceive money from the Intendant, as he was charter'd on account of the king.—That he took on board a passenger at St. Martha, who was to proceed with him to this country. Being asked, whether, being at Jamaica, he did not dispose of an adventure of his own, he answered, He did, but they were not goods of the king's—that he invested the proceeds in dry goods, which he intended to dispose of at the Havannah.—That he told Cupifono that he had contraband goods on board which he had brought from Jamaica.—That in the course of conversations with Cupifono (for he had several) he does not recollect particulars.—That Cupifono did not ask him the nature of his voyage.—That Cupifono knew that the vessel was freighted with dye-wood on account of the king, and was designed for some port in the United States.—That he had informed Cupifono that he had received money from the Intendant; but that a little while before he sailed he met Cupifono, who asked him how he was off for money? to which the deponent replied, that he should be much straiten'd, whereupon the agreement (marked E, exhibited in this cause) was made and executed between them.—That he was near two months and an half at the Havannah. Being asked, whether the paper (marked E) was given on the day it bears date, he answers, That it was not given on the day it bears date, nor does he recollect whether it was the day after, or three or four days after, but that the money

mount does not appear. That at Jamaica he purchased dry goods fit for the Havannah market, and then sailed with the brig to Havannah, where he disposed of the goods he had bought at Jamaica, on his own account. That at Havannah he borrowed 200 dollars of Cupifono; and executed the instrument called an hypothecation, to engage the vessel and her freight to Cupifono as security for this sum. That part of this money was expended in paying wages to the sailors, and part in supplying them with fresh provisions. That the vessel was refitted at the king's arsenal, and at the expence of the Intendant. And that she afterwards sailed for and arrived at the port of Philadelphia.

I AGREE with the counsel for the libellant, that the validity of an hypothecation ought not to depend upon the regularity of the captain's conduct with respect

money was bona fide paid by Cupifono and received by the deponent, and that he does not recollect when the paper (marked E*) was executed."

* The hypothecation bond.

respect to his owners, previous to the time of her arrival in a foreign port and of lending money for the relief of the ship's necessities ; and will go farther, and say, that neither ought it to be affected by the captain's subsequent conduct, provided the lender was in no ways privy to, or knowingly assistant in, his obliquities.

It has been urged on the other side, that the law of hypothecation was designed solely for the benefit of the owners, and an inference drawn, that if it can be shewn that the owners of a vessel have not been benefited, but injured, by the captain's conduct and consequent hypothecation, it ought not to be allowed. But this law has for its object the good of commerce in general. And no stranger would lend money on hypothecation, if his lien on the ship was to be invalidated by some future proof that the voyage was irregular, or that the captain had deviated from the orders of his owners and injured their interests,
either

either before or after the hypothecation made.

BUT where shall we find, in the present case, that *necessity* which should justify the captain's conduct, and be the ground of a genuine hypothecation? This vessel was charter'd by the king of Spain or his agent, the cargo on board was on the king's account, and she arrives in a leaky and disabled condition in one of his majesty's ports, where he had an officer station'd. This officer, the Intendant, orders the brig to the public warehouse to be discharged, and then round to the king's arsenal to be repaired; all which was done at the king's expence. In truth, I cannot conceive a case of less necessity, or one wherein a more certain and able relief could be depended upon.

BUT it is said, there were considerable delays before the Intendant interfered, and that the captain was obliged to send in five or six memorials, and in the mean time the mariners were in great want of wages and fresh provisions, and that in
this

this necessity the captain applied to Cupifono for 200 dollars, who refused to lend them unless the vessel should be hypothecated for his security. It appears, however, by the deposition, that the money was lent by Cupifono before the captain had made any application at all to the Intendant, and therefore the neglect of the Intendant could not have occasioned the necessity of borrowing money from Cupifono. That the captain of a vessel in the king's service, and in one of his majesty's ports, should not have credit for a few days provisions, until the proper officer could be applied to, is too incredible to be seriously admitted. Still less can it be a sufficient ground for an hypothecation, that the mariners must have wages paid to them, in a place where it does not appear that any wages were due; nor is it probable that any could be due, because this was neither the conclusion of the voyage, nor even a port of delivery.

THE money ought to have been lent solely on the faith of the hypothecation,
and

and not on any personal credit; but here was a strong and well founded credit; for it is in testimony that Cupifono knew that this brig was charter'd for the king's service, and it is expressly said, that the money was borrowed to pay wages and procure fresh provisions *until money could be had from the Intendant.*

FURTHER, in the quotation from *Molloy*, Book II. chap. 11. sect. 11. it is said —“ When a master is out of the country, and where he hath no owners, nor any goods of their's, *nor of his own,*” &c. Now, it is confessed that the captain had property of his own, and, as it should seem, to a considerable amount, since it was sufficient to induce him to violate his duty to his owners, in taking the brig, contrary to their orders,* on a trading

H

voyage

* *Translation of the sailing orders.*

Philadelphia, 18th of October, 1787.

DON NARISCO SANCHEZ,

Dear sir,

You will observe the following orders—When you arrive at Carthagena, you will say that you carry 300 barrels of flour for the king and troops. You will deliver
my

voyage to Jamaica for his own benefit ; that at Jamaica he bought goods suitable for the Havannah market, and actually sold them at Havannah, tho' contraband—and that Cupifono, the lender, was privy to these circumstances. So that, instead of the lender's having the brig alone to look to for his security, he had two substantial personal credits to depend upon, viz. the Intendant, from whom he might expect repayment of monies advanced for

my letter to Don Manuel Garcia del Rio, to whom it is directed. He will sell your venture and remit me the amount to pay your creditors. You must not stay long in these ports, and if you have the good luck to be dispatched soon, you will come back with the cargo of dyewood, which you will take at that port. If it is in January and the river is frozen, you will go to New York, where you will deliver your cargo to Don Sabrados de lo Monteros, and will write me by post. You will take particular care of your people, and suffer no disorder.

THE said Don Garcia will give you the cash you shall want for the provisions of the brig, desiring you to be very saving in all, but let nothing be wanted, and keep good order. In case you should not be dispatched soon you will present a memorial to the Viceroy, conforming yourself to the charter party.

MAY God grant you a good voyage.

JUAN JOSEPH DE AGUIRE PEREZ.

for the use of a vessel in the king's employ, and the captain, whose property he might have attached before he left the island; if satisfaction was not made. This circumstance alone, that is to say, Cupifono's knowledge that the captain had property of his own on the spot, sufficient to answer the present exigencies of the vessel, would have invalidated the bond as a maritime hypothecation, inasmuch as it removes that *necessity* which the law requires.

THERE is a circumstance in the present case, which, although not in itself conclusive, forms too striking a feature in the transaction to pass unnoticed. A singularity peculiar in a maritime hypothecation is, that the law allows an extraordinary premium or interest to the lender, even to any extent, according to the risk to be run ; because, if the ship should be lost, the money lent is lost with her. But here a stranger lends 200 dollars to a captain in distress, without even stipulating for common legal interest for the use of his money. I say,
this

this alone might not be conclusive against the hypothecation, because a stranger may be as generous as he pleases; but, in connection with the other circumstances, it gives room for suspicion that the engagement of the brig to Cupisno was not made within the rules and spirit of the maritime law.

FOR the above reasons, I adjudge that the bill in this cause be dismiss'd, so far as the same hath respect to a claim of 200 dollars, said to have been lent on the credit of the brig Santissima Trinidad.

I AM now to consider the libellant's demand of wages for serving as pilot and mariner on board this vessel from Havannah to Philadelphia.

THE counsel for the libellant hath rested his claim of £.87-5, for wages, on a written contract made at the Havannah, between Narisco Sanchez y Serna, then captain, and Canizares.

BUT it has been contended, on the other side, that as this agreement is in writing,

writing, and bears a seal, and is not, according to the terms thereof, in the usual way of agreeing for mariners wages, it becomes a special contract, and is not properly of admiralty jurisdiction.

It's being in writing, however, is no more than a testimony or memorandum of the agreement made, and does not affect the jurisdiction of this court. What is called a seal, appears to be nothing more than a printed stamp, for which a duty is paid to the crown—certainly, it is not the seal of the parties, or of either of them. But, as to the terms of the contract, these are indeed out of the usual course, and deserve further consideration.

ONE of the reasons for allowing mariners to sue in the Admiralty for their wages is, that the debt arises from services performed, or to be performed, at sea; and a lien on the ship is given them for security, because the contract they make is supposed to be on the credit of the ship.

Now, although the wages of 20 dollars

lars per month, promised in the present case, appear to be extravagant, yet as the difficulty of getting a person qualified to serve both as a skilful pilot and able mariner might have been great, I think the rate of wages per month ought to be allowed as contracted for. But I cannot, upon any principle, allow, that a captain hath a power to bind his owners and their vessel to the payment of a mariner's wages for three months after his discharge, and after all services at sea or elsewhere have ceased. If he could legally do this for three months, why not for six or for twelve months, or even saddle his owners with an annuity for life to a mariner, for a few weeks actual service? How far the common law might consider this contract as binding on the captain personally, it is not my business to say; but, as Judge of Admiralty, I shall be far from doing my part towards establishing a precedent by which captains, in addition to the great power they necessarily have over the property of their employers, may have that

that of obliging them to the payment of unlimited sums for an unlimited time. The captain might have engaged for his owners, to pay wages per month during the service, or a specific sum for the run, to any amount justifiable by the circumstances and necessities of the case; but to bind the owner to periodical payments to a mariner, after a total discharge from the service, is what I believe no captain of a vessel ever before attempted. For, whether this was to be paid all at once, or at three several times, it matters not; the contract is for *three months wages after discharge*.

THERE is another claim under this contract for 60 dollars, to take the libellant back to the Havannah, on being discharged here.

THE maritime custom is, that if a master or owner discharge a mariner in a foreign port, before the completion of the voyage for which he engaged, some reasonable allowance shall be made, over and above the wages due, to enable him to return to his own country, or go to
the

the port which, by the articles, should have completed the voyage. And this allowance is usually the amount of one month's wages. And it is a reasonable custom, where the mariner is willing to perform articles and finish the voyage, but the master or owner thinks fit to discharge him sooner, for their own convenience, and without just cause of complaint against the mariner. This part of the contract before us is, therefore, consistent with maritime custom; but certainly unreasonable as to the sum promis'd.

WHATEVER power a captain may have by law to bind his owners by contracts made abroad for the services of the ship, yet he cannot oblige them beyond what is usual and customary, without shewing that the unusual charge arose from the necessity of the case. The present charge is expressly made for conveying the libellant back to the Havannah—I have therefore enquired what is the usual charge for a passage from this port to

to the Havannah, and find that 40 dollars is an ample and generous allowance. FRAUD and collusion between the captain and Canizares, the libellant, have been suggested, but not proved. Yet, if I had not found that this cause might and ought to be determined on general principles, there are two circumstances in the case which would have induced a more strict enquiry into this captain's conduct. The one, which I have already noticed, is Cupifono's lending money on hypothecation, without securing or even asking for common interest; which, though a possible, is not a usual occurrence.—The other, is a contract between the captain and Canizares, which concludes with these remarkable words—
" Each" (that is, the original and copy)
" having the same strength as if they had
" been executed before a Notary Public at
" Havannah."—The question naturally occurs, And why was not this contract made and executed before a Notary Public at the Havannah? An honest captain, who is reduced to the necessity of
binding

binding his owners to hard and unusual terms, would at least take care that nothing should be wanting in point of form and public notoriety to justify his conduct. And, besides, I suspect that this contract, which bears a printed seal, or stamp, could not be legally executed, according to the regulations of the Spanish maritime laws and customs, but in the presence of a Notary, or some public officer. But it was not necessary to clear up these appearances, as the cause may be decided on other grounds.

UPON the whole, I adjudge and decree, that Canizares, the libellant, have and receive from Juan Joseph de Aguire Perez, the respondent, the sum of 112 dollars and 60-goths of a dollar, equal to £42 - 5 - Pennsylvania currency—that is to say—

For 5 months and 19 days wages, from July 1st to Dec. 19th, at twenty dollars per month, - - - - - £42 5 0

(63)

Brought forward,	£42	5	0
For his passage to the Havan-			
nah,	-	-	-
		15	0 0

		57	5 0
From which deduct forty dol-			
lars paid in advance at Ha-			
vannah,	-	-	-
		15	0 0

There remains	£42	5	0
---------------	-----	---	---

WITH respect to the £5 - 12 - 6 added to the account, and charged for a month's boarding, I shall take no further notice of it than to observe, that it is neither mentioned in the libel, nor supported by any vouchers or testimony whatever.

FINALLY, I adjudge, that the libellant pay one half, and that the respondent pay the other half, of the costs and charges of this suit.



For his service to the Government
of the United States, the President
has deemed it proper to award
to him the Medal of Honor.

He is a brave and noble
man, and his services to the
Government are of the highest
importance.

His name is John D. Lee.

He is a brave and noble
man, and his services to the
Government are of the highest
importance. He is a brave and
noble man, and his services to
the Government are of the highest
importance. He is a brave and
noble man, and his services to
the Government are of the highest
importance. He is a brave and
noble man, and his services to
the Government are of the highest
importance.

SILAS TALBOT,

against

**The OWNERS of the Brigs
*Achilles, Patty and Hibernia.***

JUDGEMENT.

***IN** September, 1779, Silas Talbot being on a cruise in the continental sloop Argo, discovered and pursued the brig Betsey, a British letter of marque, about 200 tons burthen, armed with eight six pounders, and laden with 214 puncheons of rum, and 1 quarter cask, and bound from Montserrat or St. Christopher's to New York, then in possession of the enemy.

* SEE the Appendix for the testimony exhibited in this cause.

my. After an engagement of two hours, Talbot captured the Betsey, and put one *West* on board her as a prize master, together with eleven of his crew, with written orders to take the prize into the port of New London, then not far distant, for condemnation. Soon after the capture, the three brigs, *Achilles*, *Patty* and *Hibernia*, belonging to the respondents in this cause, merchants of Philadelphia, came up with the brig Betsey under British colours. The *Argo* taking them for enemies, was obliged to fly. One of the three brigs chased the *Argo*, whilst the *Patty* fired upon, boarded and captured the Betsey. *West*, the prize master, finding them to be Americans, declared the Betsey was a prize to captain Talbot of the *Argo*, then in fight, and shewed Talbot's written orders; but asserted that she had been captured three days before. The persons who boarded the Betsey having seen a battle the day before between a brig and a sloop, which they took to be the same, and observing that the number of men on board corresponded

ponded with the number registered in her British papers, concluded that no credit should be given to West's declaration; whereupon a consultation* was held by the three captains, who finally made prize of the Betsey, took out all the Argo's men, except a negro, and, putting their own hands on board, ordered her for Philadelphia; but she was soon after captured by a British cruiser, and taken into New York, and so lost to all parties. The three brigs pursued their respective voyages, taking the Argo's men with them, who were dispersed in Spain, and other remote parts.

THE respondents have rested their defence on two grounds of argument:—*First*. They alledge, that they have produced sufficient testimony to prove that the brigs Achilles, Patty and Hibernia were within sight when the Argo engaged and captured the Betsey, and thereby acquired a property in the prize, according to the maritime law; and alledge, that

* ACCORDING TO W—— D——'s deposition.

that, as their interest in the booty was much greater than that of the *Argo*, they being three to one, they had a right to order the *Betsey* where they judged best for their security and benefit; more especially as they had reason to doubt the fidelity of West, in whose possession they found her, on account of the falsehood he had told them;—inferring, that if any injury was done to the libellant, it only amounted to his proportionable share, for which alone they ought to be answerable.—*Secondly*. That many suspicious circumstances on board the *Betsey*,—such as, the British papers, the number of men on board agreeing therewith, and the declaration of West, that she had been captured three days before, contrary to their own observation, were sufficient to induce them to conclude that the whole was an artifice, and therefore they were justifiable in taking her as original prize, and to consider themselves as the first captors.

THESE two positions of defence are supported by the testimony of W—

D—,

D——, a passenger on board the Patty. This deposition, on which alone the respondents have relied, labours for the establishment of two facts, which are altogether incompatible with each other, viz. first, that the three brigs were in sight, when the Argo engaged and captured the Betsey; and, secondly, that the Betsey had not been captured at all, or, at least, that the captains of the three brigs had good reason to think so, and were therefore justifiable in taking her as original prize. One only of these positions can possibly be true; therefore, a testimony which labours to establish both, may, at least, be said to prove too much.

THE fact best supported by the circumstances seems to be, that the three brigs were in sight of the battle between the Argo and the Betsey.—What then was their conduct in this point of view? The next day after the engagement, of which they had been distant spectators, they come up under British colours; they find the Betsey in the possession, and under the protection, of the Argo,

her captor—they chase away the Argo, and fire on the prize, still wearing their British colours—they board her, take out all the people placed on board by the libellant, man her with part of their own crews, give her in charge to their own prize master, and order her for Philadelphia. Could the being in sight of the engagement the day before, justify such a procedure? Surely it could not. It is manifest that the rule of law respecting vessels in sight of a capture, does not refer to what may have been seen by the claimants, but by the people on board the prize; for the rule is founded on a presumption, that the people on board the capturd vessel, seeing others coming up armed and prepared for battle, were thereby induced to surrender.

FURTHER, I can on no account admit the doctrine, now for the first time advanced, and unsupported by any authority whatever, that captains claiming a share in the prize they may have seen capturd, have a right to order the vessel taken where they please, by virtue
of

of a majority of votes, or of their superior interest in the captur'd booty. Their claim must follow and depend upon the success of the real captor. Besides, in the present case, the libellant, who fought for, and alone took, the brig Betsey, had at least some share in the prize: the captains of the three brigs, therefore, ought in justice to have left his prize master on board to prosecute the Argo's claim—which was not done.

UPON the whole, this seems to have been an act of such unjustifiable violence and wrong on the part of the brigs Achilles, Patty and Hibernia, that I am clear in deciding in favour of the libellant in this cause: and having carefully endeavoured to ascertain the value of the property lost, I find,

That a brig of 200 tons, mounting 8 six pounders, with her tackle, apparel, furniture & provisions on board, was, in

Octob. 1779, worth - £.3500 0 0
214 puncheons of rum, averaging

Brought forward,	£.3500	0	0
aging 100 gallons each, at			
10s. per gallon,	10700	0	0
1 quarter cask of rum, 25			
gallons,	12	10	0
	<hr/>		
	£.14212	10	0

But as the brig Betfey had not			
actually arrived in port,			
some allowance ought to be			
made for the risk she had			
yet to run, which appears			
to be worth 10 per cent.			
insurance, amounting to -	1421	5	0
Which, being deducted,	<hr/>		
leaves	£.12791	5	0
	<hr/>		

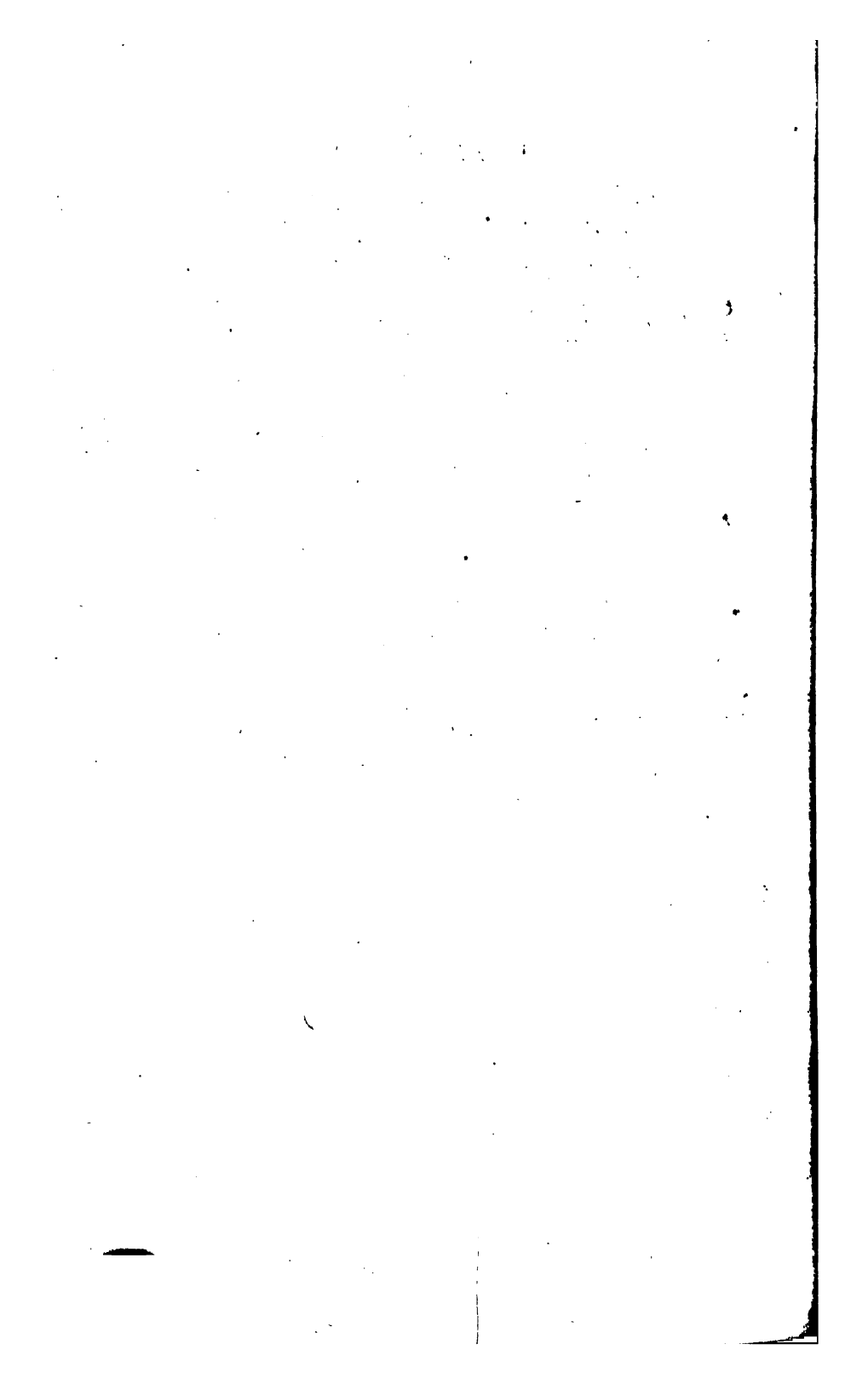
JUDGMENT in favour of the libellants
for £.12791 - 5, with costs of suit.

*NO discrimination was, in this cause,
attempted to be made respecting the three
captains of the brigs Achilles, Patty and
Hibernia ; so that the principal facts are
attributed*

attributed to all, and the judgment was general against the respondents.

THE cause was carried by appeal to the Court of Appeals established by Congress in prize causes ; but that Court rejected the cause, it appearing to them to be a suit between a citizen and citizen for damages merely.—This Court was soon after dissolved, on account of the peace—Talbot's cause was then carried into the High Court of Errors and Appeals for the commonwealth of Pennsylvania, where, after long arguments, as well to the jurisdiction as to the merits, a decree past in favour of the appellees, for £.11,141-5-4, with costs.





DEAN, & OTHERS,

against

JOHN ANGUS.

**JUDGEMENT ON A PLEA TO THE JURIS-
DICTION OF THE ADMIRALTY.**

IN a former suit in this court, Silas Talbot libelled and recovered against Dean, Purviance and Harbefon, as owners of the brigantine Hibernia, and also against certain other persons, respondents in that cause, for a wrongful capture on the high seas. From the decree in that cause, an appeal was entered, and the cause removed to the High Court of Errors and Appeals for the commonwealth; where a judgment was finally obtained against the said respondents to a considerable

derable amount. And now, Dean, Purviance and Harbeson libel against John Angus, their captain, for satisfaction of the damages they have sustained, in consequence of the wrongful capture he had made. To this libel, Angus hath filed for answer, a denial of the wrong done, and a plea to the jurisdiction of this court in the present cause—" For this, viz. that
 " the contract between the said libellants
 " and him, the said Angus, and also the
 " damage alledged to be sustained by
 " the said libellants, if any there be, arose
 " upon the land, to wit, in Philadelphia,
 " in the county of Philadelphia."

THREE acknowledged principles of law naturally present themselves, for the solution of the present question, viz,
 1st, WHERE the original cause of action is *exclusively* of admiralty or *exclusively* of common law jurisdiction, all incidental matters, and all matters necessarily flowing from, or dependent upon, that first cause of action, shall follow the original jurisdiction, whatever the complexion

plexion of those matters separately considered may be.

2dly. WHERE the original cause of action is partly of common law and partly of admiralty jurisdiction, the common law shall be preferred.

3dly. WHERE the jurisdictions are concurrent, the suit may be determined in either.

To one or other of these principles must the present case apply, to ascertain the jurisdiction by which it is to be tried; and the propriety of the application depends upon this sole question, What is the original cause of action in this suit?

It is alledged in support of the plea, that this is a *new* action between the owners of a vessel and their captains, and hath no necessary connection with the suit brought by Silas Talbot—That it is enough if the respondents shew that the decree passed against the libellants, not as principals in the wrongful capture, but solely on account of the maritime law, which makes owners answerable for the misconduct of the captains they em-

ploy ; and, therefore, their connection with Angus, as captain of the brig *Hibernia*, must be considered as the true cause of the damages they say they have suffered, and the source from which the present suit originates—And so infer, that as this connection is grounded on a contract express or implied, made upon the land, the original cause of action must, from its nature and locality, be exclusively of common law jurisdiction.

THE two criterions of exclusive jurisdiction are, the *subject matter* and the *locality* of the transaction.

It is not doubted but that the question of *prize or no prize*, when it is the foundation of a suit, is *exclusively* of admiralty cognizance, from the *subject matter*. The authorities to this point are too numerous and conclusive to admit of contradiction. But these authorities go farther, and say, that the mere taking *as prize*, and all matters dependent thereupon, are also peculiarly of admiralty jurisdiction. Lord chief justice *Lee's* opinion, in the case of *Rous v. Haffard*,

Haffard, as cited by lord *Mansfield*, and again cited by justice *Willes*, in the case of *Le Caux v. Eden, Douglass*, 581, is full to this purpose. " The great question " was, Whether an action of trespass " would lie for taking a ship *as prize* ? " Lord chief justice *Lee*, having called " in two civilians to his assistance, delivered the opinion of the court, That " though, for taking a ship on the seas, " trespass would lie at common law, " yet, when it was taken *as prize*, though " taken wrongfully, though it were acquitted, and though *there were no colour " for the taking*, the judge of the admiralty was judge of the damages and " costs, as well as of the principal matter ; and he laid it down as law, that " if such an action was brought in England, and the defendant pleaded, not " guilty, the plaintiff could not recover."

By this quotation, it is clear, that, in order to fix the admiralty jurisdiction, it is not necessary that the question before the court should precisely be, Is this property lawful prize to the captor,
or

or is it not ? but a suit for costs and damages may be had in the admiralty for a taking *as prize*, though wrongfully done, and even without any colour for such taking; and, as it should seem from the case, even though the property, so taken, should not be in the possession of the court.

So, also, in the case of *Lindo v. Rodney and Vaughan, Douglass*, 592, lord *Mansfield*, in giving the opinion of the court, says—" A thing being done upon the high seas, does not exclude the jurisdiction of the common law. For seizing, stopping or taking a ship upon the high seas *not as prize*, an action will lie; but for taking *as prize*, no action will lie. The nature of the question excludes, not the locality." And a little farther on—" The end of a prize court is to suspend the property till condemnation, and to punish every sort of misbehaviour in the captors."

How it came to pass, that the case of *Silas Talbot* was, by the Court of Errors and Appeals, and still is, by concession of

of counsel in the present cause, considered to be *not* of admiralty jurisdiction, on account of the *subject matter*, I am at a loss to conceive; especially when I look at the two only points of defence taken in that cause, viz. 1st. That from the papers found on board the captured vessel, and from other concomitant circumstances, there was a reasonable colour for *taking as original prize*; and, 2dly. That if the vessel captured was indeed prize to Silas Talbot, the three brigs were in sight at the time of the capture, and, by the maritime law, acquired thereby an interest in the property—I say, these pleas, together with the current of the testimony then exhibited, and the time of the transaction, being time of war, all united in fixing that cause within the admiralty jurisdiction, from the subject matter and nature of the case.

It is in obedience to strong conviction, that I thus venture to differ in opinion from the judgment of the honorable Court of Errors and Appeals—a judgment which, I am inclined to believe, would

would not have taken place, but from the peculiar situation of Talbot's cause. The Court of Appeals for the United States, in prize causes, had rejected the appeal, because the question was not strictly *prize or no prize*, but an action for damages between citizen and citizen. That court, as I have understood, looked at that cause in no other point of view, and therefore refused to take cognizance of it, and soon after adjourned.—The appeal was then carried to the High Court of Errors and Appeals for this commonwealth. The proctors had previously agreed not to contest the point of jurisdiction, and so the cause came before the judges on the merits only ; and the court proceeded to sentence, without suspecting their jurisdiction.—After sentence, however, some of the judges began to entertain scruples respecting the jurisdiction of the court; and, upon enquiry, found that the jurisdiction had only been submitted to by consent. The court well knew, that consent could not give jurisdiction, and therefore retracted
or

or suspended the sentence, until an argument should be held on that point—and the question of the jurisdiction was again agitated. In the mean time, that is, between the rejection of the cause by the Court of Appeals for the United States, and its introduction into the Court for the commonwealth, the case of *Le Caux v. Eden*, as reported by *Douglafs*, with lord Mansfield's dissertation on admiralty jurisdiction subjoined, made their first appearance amongst us, and furnished new ideas respecting the court of admiralty. Then, for the first time, did the distinction occur, between the *prize* court and the *instance* court of admiralty. Possessed of this idea, the judges of appeal for the state looked at the proceedings which the court of admiralty had adopted in the case before them, and found they had been *in personam*, by attachment, to answer for damages arising from a tort committed at sea. This, it was observed, was never the practice in the *prize* court, which always proceeded *in rem*, by proclamation and monition,

monition, whether the property be, in fact, in the possession of the court or not. — And so it was in the case of the *King v. Broom*, *Carth.* 398, by proclamation at the Royal Exchange, although the prize taken had been previously sold at Barbadoes. And, for this error of form in the admiralty, *Talbot's* case was considered as belonging to the *instance* court. The judges of appeal considered themselves as an *instance* court of appeals, and so proceeded to the definitive decree.

HAD the court of admiralty, when *Talbot's* cause first made its appearance there, been possessed of the light which hath been since thrown upon this subject, it is more than probable that the process would have been conducted otherwise than it was. It should be observed, however, that an *exclusive* jurisdiction cannot be subverted by an erroneous process.

How far the consideration, that if the court of appeals for the commonwealth should reject *Talbot's* cause (as the court for the United States had done), the appellants

pellants would have had no other resource, and so been deprived of the benefit of an appeal, might have operated to induce the judges to take that cause within their cognizance as an *instance* court, I will not presume to say. But the peculiar circumstances of the case ought to be remembered ; and I have mentioned them on this occasion, from a sense of the duty I owe to the jurisdiction entrusted to my care.

I COME now to consider the origin of the cause before the court, and whether it is, or is not, necessarily dependent on, and consequential to, the case of Silas Talbot.

It has been said, that this suit is derived from three circumstances, viz. the contract by which Angus was made captain of the *Hibernia*—the wrongful taking at sea—and the damages the libellants have been obliged to pay, in consequence of this contract and wrongful taking. And it has been urged, that as two of these circumstances, viz, the contract and the payment of damages,
M happened

happened on the land, the common law, by the second general rule, hath the exclusive jurisdiction.

It appears to me, however, that owners are answerable for torts done by the captains they employ, under a general principle of the maritime law, and not by virtue of any special contract. No such responsibility can be deduced from any articles or sailing orders given to captains of vessels. The contract may be the ground of an action of damages for a breach of orders respecting the particular interests of the owners; but, in cases of tort, the owners are answerable by a general law. The libellants have been obliged to pay the damages in Talbot's case, not because they employed Angus, but because they were owners of the brigs.

NEITHER can I consider the payment of monies, according to the decree in favour of Silas Talbot, as the origin of the present suit. We should not stop short in the train of causes. In such a train, every circumstance is the effect of the preceding

preceding and the cause of the subsequent link. No decree would have past, no damages have been paid, nor would the present suit have been instituted, but for the original wrong done at sea. To this wrong, therefore, we must have recourse, for the source of the present action.

SOME pains have been taken to apply the case of ransom bills, charter parties, and policies of insurance, all sueable at common law, to the present suit.—A ransom bill supposes a divesture of property by the rights of war, and the bill is a promissory note for a certain sum, in consideration of the victor's relinquishing his right of conquest, and restoring the property. In a suit, therefore, on a ransom bill, the question of *prize or no prize* can only come in incidentally, to shew whether there was a value received or not. For, if the taking was wrongful, the property never divested, and, of course, the promissory bill was given without consideration.—Charter parties and policies of insurance, are written contracts, executed

cuted on land, respecting certain specific contingencies. It is altogether immaterial where these contingencies shall happen. The suit is founded in the binding force of the contract, and the contingencies are only incidental circumstances, shewing that the force of the contract is to take place and operate. But these are not parallel to the case before the court, wherein the libellants complain of damages they have sustained, in consequence of a tort committed at sea, by the captain they had employed.

WHEN the case of Silas Talbot came first before this court, the libel was filed in the name of Silas Talbot *qui tam*, against the brigs Achilles, Patty and Hibernia, and against certain persons, in the said libel named, as owners and captains of the said brigs. All these persons (except two, if I rightly remember) appeared either in person or by proxy, and entered into stipulations, according to the practice of the court. In this form the suit proceeded through the admiralty and through the court of appeals. The question

question was general in both courts, viz. Whether there had been a wrong done? and if so, Whether the parties who had appeared as respondents to the libel, were answerable for the damage, and to what amount? And, finally, the decree was also general, that the appellants should pay to the appellee certain monies, in recompence of the injury sustained. But how far any particular captain, or the owners of any particular vessel, might have justified themselves by a separate defence, was never the subject of enquiry—no such specific justification having been proffered in either court. And whether it is or is not now too late to make discrimination, may be the subject of future discussion: but I mention this to shew, that the present libel manifestly rises out of Talbot's case, and that its pursuit will unavoidably force us up to the wrongful taking *as prize*, for the origin of the present suit.

SINCE, then, I cannot but consider the case of Silas Talbot as properly belonging to the *prize court* of admiralty, and
that

that the present suit originates from, and is a supplementary part of, that transaction ; I cannot (according to the first principle stated) but overrule the present plea to the jurisdiction of this court.

I CONCLUDE with this observation, that in all pleas of this kind, where the law is doubtful, the leaning of the court will be in favour of its own jurisdiction. Not from a desire of extending the admiralty cognizance, but for this important consideration, That if the decision in favour of the jurisdiction should be erroneous, the doors of the common law are open for redress, and a prohibition may be obtained ; but there is no remedy for the erroneous exclusion of parties who apply for the process of the admiralty, the benefit of the laws by which it is governed, and the summary justice it affords,

May 2, 1785.



DEAN, & OTHERS,

against

JOHN ANGUS.

JUDGEMENT ON THE MERITS.

* **T**HE bill filed in this cause states, That John Angus, being commander of the brig Hibernia, belonging to Joseph Dean and others, did, on a certain day, without any licence, order, or authority from his owners, and without any probable cause of capture, with a view to his own private interest and emolument, combine and confederate with certain malefactors, and did pursue and take the brigantine Betsey, then in the possession of

*-SEE the Appendix for the exhibits in this cause.

of Silas Talbot, commander of the sloop Argo, as lawful prize and booty of war. And that the said John Angus, not being ignorant of the premises aforesaid, but well knowing the same, and intending to deprive the said Silas Talbot of his prize, and to defraud and injure, as much as in him lay, his owners, the libellants in this cause, did cause the brigantine Betsey to be sent to places unknown, &c. whereby she was lost, &c. The bill then goes on to state, That, for this cause, the said Silas Talbot did afterwards file his bill in this court against the said John Angus, and against his owners, the present libellants, and also against certain other persons, in the said bill named, for the wrong and injury done, and did, by the sentence and decree of this court, recover against them the sum of £12,700 - 5 damages, with costs of suit. Whereupon, an appeal was entered to the honorable the High Court of Errors and Appeals of this commonwealth, in the prosecution and final issue whereof the said Silas Talbot did recover against the appellants

pellants the sum of £11,141 - 5 - 4, of which sum the libellants in this cause were compelled, and did actually pay the sum of £4000; and, also, that they had expended the further sum of £450 in defending themselves against the bill of the said Silas Talbot, and in prosecuting their said appeal. Whereupon, they now pray judgment against the said John Angus, for reparation of the damage and loss they have so sustained.

I HAVE found it necessary to the determination of the present question, to consider it under the three following points of view, viz.

1st. How far the cause, now before the court, may be considered as connected with, or determined by, the decree in the case of Silas Talbot.

2d. UNDER what circumstances, owners of vessels ought to recover against the captains they employ, for damages suffered in consequence of their misconduct. And,

3d. THE specific circumstances of the present case, as they stand on the testi-

mony ; or, what is called the merits of the cause.

As to the first point—I can see no connection between this cause and the case of Silas Talbot, further than this, that as it originates from the same transaction, to wit, a *taking a prize on the high seas*, the jurisdiction is thereby determined. In all other respects, the two causes proceed on different principles. The points in view in Talbot's case were—how far owners of vessels were answerable for torts committed by the captains they employ ; and whether the taking in question was, in fact, such a tort, as they ought to be answerable for. The objects in the present case are—under what circumstances, owners may recover against their captains ; and whether *Angus* was, or was not *particeps criminis*, with the wrong-doers in Talbot's case. The complexion of the two causes being thus manifestly different, it cannot, with any reason, be admitted, that the testimony or decree founded thereupon, in the former, should be conclusive in the present

sent case. The decree in Talbot's case was against certain persons who, by stipulation, had made themselves responsible for the issue of that suit. It is not inconsistent with the record of that decree, for captain Angus, who was not one of those stipulants, and who was no party to that suit, to come in now, and make his specific defence, when personally called upon to answer, and shew that he was not one of the wrong-doers *against whom* that decree was obtained.

On the second point, viz. Under what circumstances owners of vessels ought to recover against the captains they employ, for damages suffered in consequence of their misconduct—It is consonant with reason and authority, that captains are not answerable for losses arising from unavoidable accidents, mere errors of judgment, or failure of success after having exercised all reasonable diligence and discretion. It would be very difficult, and is at present unnecessary, to delineate the particular circumstances, and kinds of misconduct, which should
render

render a captain responsible to his owners. Every case that occurs, must be judged of by its own peculiar circumstances. The present libel states, " That
 " John Angus did, without any authority from his owners, combine with certain malefactors, and, without probable cause of capture, take the brig Betsey, then in the possession of Silas Talbot, as prize and booty of war. And
 " that he did this, not ignorantly, but well knowing the circumstances, and
 " with a view to injure the said Silas Talbot, and also his owners, as much
 " as in him lay." If these charges are supported by the testimony now before the court, there can be no doubt but that he ought to be answerable to his owners for whatever they have suffered in consequence of this transaction.—

AND this leads to the third point, viz. The consideration of the specific circumstances of the case, as exhibited by the testimony ; or, the merits of the cause.

THE facts, so far as they respect captain Angus,

Angus, appear to be in substance as follows :

ANGUS sailed on a trading voyage to Teneriffe, in the armed letter of marque brig *Hibernia*, in company with the brigs *Patty* and *Achilles*, also letters of marque, and bound to some ports in Europe, under the commands of captains *Prole* and *Thomson*. . Angus had received written instructions from his owners (the present libellants) to keep company with the two brigs so long as he should think it prudent, and had their approbation to cruise with them on the coast for two or three weeks, if they should so agree. At Reedy Island, in the Delaware, a consultation was had between the three captains, and *Prole* was appointed commodore. Two or three days after they had got out to sea, they discovered a brig and a sloop at a distance. *Prole* gave orders to chase, which was done—*Prole* and *Thomson*, under British colours, came up with and took the brig ; but the *Hibernia*, being a dull sailor, was left four

or

or five miles aftern. When she came up, however, captain Angus enquired what the captured vessel was, and was informed by Prole or Thomson, that she was a good prize, bound from Montserrat to New York. To which Angus replied, that if the brig was prize, the sloop (then in sight) must be so too, and asked why one of their fast sailing brigs did not pursue her. To which it was answered, that they did not chuse to leave the prize till they saw her well manned, and ordered him to chase the sloop; which he accordingly did for two or three leagues; but finding he could not come up with her, he haul'd his wind, and beat up again for the other brigs; but did not reach them till just before dark. Prole then sent a boat to Angus, demanding two of his hands to help man the prize, forwarding, at the same time, a paper for Angus to sign; which appears to have been orders drawn up by Prole, and signed by him and Thomson, for the prize master they had put on board the captured brig. Angus hastily

ly signed this paper on the binnacle, and sent the two men required. The wind then blowing very fresh, the sea running high, and the night coming on, the four brigs separated, and saw each other no more.

FROM this detail it is manifest, that Angus had no opportunity of acquiring information of those circumstances which were the ground of condemnation against the respondents in the suit of Silas Talbot. The assurance of Prole, the commodore, that the Betsey was good prize, was, in the then situation of affairs, sufficient to convince Angus that there must have been, at least, probable cause of capture; and if the enterprize had been a successful one, which he had no substantial reason to doubt, Angus would not have been justifiable in neglecting any thing, on his part, to secure to his owners a share of the booty taken, or to add thereto by endeavouring to take the sloop also.

THE only circumstance which hath a direct

direct tendency to criminate captain Angus, is his signing the orders to the prize master put on board the Betsey, directing him to "keep to the southward, for fear of falling in with the "Argo."—There are two ways in which this may, very naturally, be accounted for; neither of which are in the least contradicted by the testimony, viz. that in the hurry of the transaction, the boat waiting alongside, the sea rough, and night coming on, he signed these orders without reading them, having confidence in those who had drawn them up and signed before him; or, that, according to his first conclusion, if the brig was prize, the sloop must be so too, he still conceived the Argo to be an enemy, and therefore to be avoided by the prize master.

But, without having recourse to surmises, I am clearly of opinion, that the libel is not supported by the testimony; that is, there is not sufficient proof, that the respondent "did wilfully and knowingly, and without probable cause of capture, join with others in taking
" from

“ from Silas Talbot his prize and booty
“ of war.”

IT is manifest, indeed, from the records of the Court of Appeals, that the libellants have suffered considerable damage, in consequence of this transaction at sea. But, as they had embarked themselves in a suit with real wrong-doers, and suffered judgment to go against them on general principles, without attempting a separate defence, this is no reason why Angus should not now bring forward that specific testimony, with regard to his own conduct, as may exculpate him from the charges laid in the present libel.

• SOME stress has been laid on a passage in the deposition of W—— D——, exhibited in Talbot's cause, tending to prove that Angus was not so ignorant of the circumstances respecting the Betsey and Argo, as he pretends. The passage is in these words—“ Afterwards captains Prole,
“ Angus and Thomson, in the presence
“ of this deponent, consulted what they
“ should do with the brig Betsey, and
o “ being

“ being of opinion,” &c. Whatever weight this deposition might have had in Talbot’s suit, it is inadmissible in the present ; but I would observe, that this circumstance is not supported by any other testimony on the records of this court ; on the contrary, from the general history of the transaction, there seems to have been no period of time in which Angus could have left his vessel, or the other captains have been on board the *Hibernia*, to hold this consultation. D— must, therefore, have been mistaken. Indeed, this is not the only circumstance in which he is singular. For, just before, he says—“ The brigs *Achilles* and “ *Hibernia* endeavoured to speak her “ (meaning the *Argo*), but could not “ come up with her. And upon the said “ Church’s saying, that captain Talbot “ was not a man that would run away “ from one of them, if they would not “ both chase, the brig *Achilles* then chased alone,” &c.

Now, the whole current of testimony agrees in this, that it was the *Hibernia*,
and

and not the Achillès, that chased the Argo. And, as I remember, in some stages of Talbot's suit, it was urged as a circumstance of aggravation against the owners of the Hibernia, that their captain was employed in driving off the Argo, whilst his confederates were plundering her prize.

These observations on D——'s deposition do not directly affect the present question ; but I mention them because, if I could find any substantial ground to believe that Angus was indeed *particeps criminis* with Prole and Thomson, or that he knew, or had any opportunity of knowing, the circumstances which should have prohibited them from making that unfortunate capture, I should not be so clear, as I now am, in adjudging.

THAT the bill in this cause be dismissed, and that the libellants pay the costs of suit.

WHEREUPON

WHEREUPON the libellants appealed; and, after long argument, the Court adjudg'd, in June, 1785, that John Angus should pay to the libellants £.948 - 15 - 10, with interest thereon from the twenty-second day of January, 1785.



APPENDIX.

THE MUSEUM

EXHIBITS in the cause *Silas Talbot* against the *Owners* of the brigs *Achilles*, *Patty* and *Hibernia*.

Deposition of ISAAC CHURCH.

ISAAC CHURCH, a witness produced, sworn and examined in this cause, on the part of the libellant, deposes and saith, That he was on board the sloop *Argo*, commanded by the libellant in the above cause, in the beginning of September, anno Domini 1779, a vessel in the service of the United States—That early in the morning they saw a sail, and gave chase, and about eleven o'clock came up with and engaged her, and after a short time she surrender'd, which proved to be the brig *Betsy*, from St. Kitts bound to New York, a letter of marque, carrying eight guns—That deponent was ordered on board, and directed to proceed to New London—That the captain's name was Leech, and the cargo consisted of about two hundred and fourteen puncheons of rum—That about two o'clock the same day [and not before] they saw three sail to windward, with the wind to the westward, and by their course and sail found they were in pursuit—That they ran away all night, and in the morning saw three sail to windward, which he believes were the same vessels they had seen the

the day before—That they kept company still with the Argo, and about nine o'clock they came up with British colours flying, and captain Talbot seeing them coming up, and finding it impracticable to escape with his prize, gave them orders to do the best they could for themselves, and about the middle of the day the three vessels came up, and fired under British colours; at the second fire, they hauled down their colours, which were British reversed, according to the custom of prizes, when they boarded them, and took charge of the vessel—That the three vessels above mentioned were, the brig Patty, capt. Prole, the brig Hibernia, capt. Angus, and another brig commanded by capt. Thomson, all from Philadelphia; the first and last bound for Spain, and the other, as he understood, ~~for~~ Tenerife—That captain D——, who was a passenger on board capt. Prole, was sent, at the particular request of the deponent, on board the Betsey, to prevent the plundering which capt. Prole's men were committing—That every man belonging to the Argo was taken out, and she was manned by their own men, except one of the Argo's, who was sent back again, after a strict examination—That when deponent was sent on board the Patty, he saw a boatswain and a sailmaker, whom he knew, and who were taken by the Argo about ten days before out of a vessel from London, and sent prisoners to Philadelphia—That deponent, in conversation with capt. D——, told him he was sure they were British because of the boatswain and sailmaker aforesaid being there (* who, the deponent said, he thought had escaped from their guard to get to New York) and D—— said they were not, but were shipped at Philadelphia, being prisoners there, and taken out of the jail—That, finding it impossible

* This parenthesis is interlined.

impossible to regain the prize, they all enter'd on board capt. Prole, and proceeded on the voyage with him—That at the time they were pursued, they were within about forty-eight hours sail of New London, as the weather then was.—Deponent says, he is not interested in the event of this cause, for that he himself was not originally shipped on board of the Argo, but had been retaken out of a vessel bound to New York, about a fortnight before, and kept on board by captain Talbot, who was an acquaintance, and promised to carry him home.

ISAAC CHURCH.

SWORN to Jan. the 20th, 1783.

before

FRAN. HOPKINSON.

MEMORANDUM. The words [AND NOT BEFORE] interlined in the fifteenth line were inserted at the request of the above Isaac Church, and sworn to, before

FRAN. HOPKINSON.

Jan. 22, 1783.

Deposition of GEORGE WEST.

GEORGE WEST, a witness produced on the part of the libellants in the above cause, deposes and saith, That he sailed from New London, in the state of Connecticut, on the twelfth day of August, in the year of our Lord one thousand seven hundred and seventy-nine, on board the sloop Argo, commanded by Silas Talbot, and belonging to the United States of America, bound on a cruise against the enemies of the said states—That on the sixth day of September, in the year aforesaid, being at sea,

P

they

they captured a brigantine called the *Betsey*, under British colours, and bound from the Island of Montserrat to the city of New-York, then in the possession of the enemies of the United States; the said brigantine being, at the time of the said capture, under the command of John Ruffel, a subject of the king of Great Britain, armed with eight guns, manned with fourteen men, and loaded with 214 puncheons of rum, and several tierces, he thinks about ten—That the deponent was appointed prize-master, and put on board the said brigantine with eleven men, and ordered to carry her to New London—That the deponent proceeded on his voyage, pursuant to his said orders, until the next day, being the seventh of the said month of September; being then in the latitude of $39^{\circ} 4'$ north, and longitude $71^{\circ} 24'$ west, he saw three brigantines under British colours, who gave him chase, and came up with him—That one of them fired on him, upon which he struck—That they proved all to be from the port of Philadelphia, the one which fired named the *Patty*, and commanded by John Prole, who examined the deponent, and was informed by him that the vessel which he commanded was a prize to the sloop *Argo*, then in sight—That captain Prole examined the papers on board the *Betsey*, and, finding no copy of the *Argo*'s commission, made prize of her, altho' the deponent produced his written orders from his captain—That captain Prole ordered the deponent, and the eleven men with him, on board his own vessel, and took from the *Betsey* two six-pounders, and a quantity of the powder and ball, and put a prize master and some men of his own on board her—That captain Prole carried the deponent to Spain—That the deponent cannot tell whether either of the three brigantines aforesaid were in sight at the time of the capture of the *Betsey* by the *Argo*

go—That at the time of the seizure of the said prize by captain Prole, she had the British colours flying with the Union downwards—That this deponent is not mediately or immediately interested in the event of this cause—And further this deponent saith not.

GEORGE WEST.

SWORN to this 4th of April, 1783,
before

FRAN. HOPKINSON.

Deposition of JOSEPH PECK.

CAPTAIN JOSEPH PECK, of Providence, in the state of Rhode Island, a witness produced, sworn and examined on the part of the libellant in this cause, deposes and saith—That the price of Jamaica spirits in the town of Providence aforesaid, in October, 1779, was two dollars hard money the gallon; and that the deponent, about that time, gave two dollars in silver per gallon for Jamaica spirits in Providence, which was as cheap as he believes he could buy it for—That the quantity this deponent bought was ten gallons, and no more—That deponent does not know what was the price of Jamaica spirits after the month of October aforesaid.

JOSEPH PECK.

SWORN to this 21st of June, 1783,
before

FRAN. HOPKINSON.

W—

W—— D——'s *Deposition.*

W—— D——, of the city of Philadelphia, merchant, being duly sworn as a witness in this cause, on the part of the respondents, deposeth and saith—That on or about the first day of September, in the year 1779, as a passenger, he sailed from Philadelphia on board the brigantine Patty, commanded by John Prole, bound on a voyage to Cadiz—That they sailed from the Capes of Delaware the sixth of the same month of September, at two o'clock post meridiem, in company with the brigantine Achilles, commanded by captain George Thomson, and the Hibernia, commanded by captain John Angus—That about ten o'clock ante meridiem, on Monday morning of the same day, the said three brigantines, the Patty, the Achilles and Hibernia, all being within hark of each other, and becalmed, this deponent heard a firing of cannon, and being on the quarter deck of the brig Patty, he looked towards the place from whence the report came, and saw a thick smoke, which being immediately dispersed, this deponent saw two sail very distinctly, one of which afterwards proved to be the brigantine Betsey, and the other, as the deponent was informed by George West and Isaac Church, was the sloop Argo—That when this deponent first saw the brig Betsey and sloop Argo, the Betsey was with a light breeze, standing towards the three brigs Patty, Achilles and Hibernia—That from the time this deponent heard the firing, and saw the Betsey and sloop Argo, it was more than one hour before the firing ceased, during all which time the brig Betsey was tending towards the Patty, Achilles and Hibernia. After the firing ceased this deponent saw the sloop run close to the
brig

brig Betsey, and then they both sailed away from the brigs Patty, Achilles and Hibernia, but did not get out of sight of them until the evening, and that then the wind springing up, the Patty, Hibernia and Achilles chased the brig Betsey and sloop—That about day break the next morning, this deponent, from on board the Patty, discovered two sail, which afterwards proved to be the brig Betsey and sloop which they had chased the night before, the sloop being ahead of the Betsey ; the Patty was the first of the three brigs that came up with the Betsey, and fired a gun at her, the brig Betsey then having an English jack flying, which she struck, but he cannot say whether or not it was reversed : when the brig Patty fired (at the brig Betsey) she had an English jack at her fore-top-mast head—That a boat from the Achilles was the first that went on board the brig Betsey—That this deponent, at the request of captain Prole, went on board the brig Betsey, together with other persons from the Patty, to examine and make report, who and what the brig Betsey was—That before the deponent went on board the brig Betsey, she was haled by the brig Patty, and the people on board the Betsey answered, she was from Montserrat. When on board the brig Betsey, the deponent saw George West, who called himself prize master, Isaac Church, and others, to the exact number of names mentioned in the English papers found on board the Betsey, which specified the master and number of men belonging to the Betsey. The said George West then said, that he was prize master of the brig Betsey ; and the said George West and Isaac Church both said, that she was a prize to the sloop Argo, commanded by captain Talbot, who had taken the said brig Betsey three days before, and that they were going to a port in New England, which this deponent does not recollect

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—The deponent and others from the brig Patty did not believe what Church and West told them; they asked West and others on board the Betsey, if they had a copy of captain Talbot's commission, they answered the deponent that they had not: nor did George West, or any other person, produce or shew any writing (at that time) from captain Talbot, or any other, calling the brig Betsey a prize, or giving any directions concerning her—That deponent opened the folds of the main sail of the Betsey, and saw a shot-hole in it fresh, very black, and which smelt strong of powder—That he shewed it to the said Isaac Church, and observed to him, that it proved that the brig Betsey was not taken three days before, at the same time telling Church that there had been a rain within that time, which would have altered the appearance of the shot-hole—That the said Isaac Church, notwithstanding, still asserted that the Betsey had been taken three days before. Whilst this deponent was on board the brig Betsey, the sloop was ahead sailing from her, and upon the said Isaac Church saying that the sloop was the Argo that had taken the brig Betsey, the brigs Achilles and Hibernia endeavoured to speak her, but could not come up with her; and upon the said Church's saying, that captain Talbot was not a man that would run away from one of them, if they would not both chase, the brig Achilles then chased alone, but could not get up with the sloop, she going before the wind. Upon which, the deponent desired the said Isaac Church to make a signal to the sloop that they were friends, and that the sloop should come to, but he answered that he had no signal to make—That afterwards captain Prole, Angus and Thomson, in the presence of this deponent, consulted what they should do with the brig Betsey, and being of opinion that the said George West

West and Isaac Church had not told them the truth, and concluding, from all circumstances, either that the brig Betsey was a British vessel bound for New York from the Island of Montserrat, as the custom house papers on board her mentioned, or else that she was the same brig that they had seen engaged with the sloop the day before, and as the said brigs the Achilles, Patty, and Hibernia were armed, present, and in sight of the sloop and brigantine Betsey during their engagement and when the brig Betsey struck, they, the said captains Prole, Angus and Thomson, were of opinion, that the officers and seamen on board the brigantines Achilles, Patty and Hibernia, were entitled to shares in the prize brig Betsey. Thereupon, the said captains Prole, Angus and Thomson, put a prize master, of the name of M'Neal, and several seamen from each of the brigs Hibernia, Patty and Achilles, on board the brig Betsey, with orders to sail for the port of Philadelphia; and the said George West and Isaac Church were ordered and came on board of the brig Patty, and went in her to Cadiz—That afterwards, on their passage to Cadiz, this deponent, captain Prole, Mr. John Groves, the said George West and Isaac Church, frequently conversed freely together relative to the brig Betsey and her capture; and this deponent has heard the said George West and Isaac Church declare, that the brig Betsey was taken only the day before that captain Prole, Angus and Thomson took her out of the possession of the said West and Church. And the said West and Church both declared, that they had alledged that the brig Betsey had been taken three days before that time, hoping that they should have been believed and suffered to have gone on. And that the reason why West and Church had endeavoured to deceive them was, that the said George West and Isaac Church, and
 others

others on board the brig Betsey, thought that the brigs Patty, Achilles and Hibernia were the same three vessels which they had seen the day before during the engagement between the sloop Argo and brigantine Betsey, and the capture of the said brigantine Betsey; and also thinking that the sloop Argo's share of the brig Betsey would be but small when divided with the brigs Hibernia, Patty and Achilles—That the deponent also heard a seaman, whose name he does not now recollect, who belonged to the brig Betsey before she was taken, and was on board of her when taken possession of by captain Prole, Angus and Thomson, say, that the brig Betsey was taken only the day before she was so taken possession of by captains Prole, Angus and Thomson, and that during the engagement of the sloop Argo with the brig Betsey, he and the other people on board the brig Betsey saw three brigs, and the brig Betsey was bearing down for the said three brigs, and in sight of them when she struck—That this deponent remembers, when on their passage to Cadiz, the said George West came from his watch on deck into the cabin very wet (as it was raining) and as he was changing his cloaths, he took a paper out of his pocket and shewed it to this deponent, saying it was a paper he hoped would have saved the prize. The deponent read the paper, which was then wet; it contained but a few lines, and appeared incorrect, but signified that the said West was to proceed with the brig Betsey to some port in New England—That the deponent immediately returned the paper to the said George West, and that the said George West then tore in pieces the said paper, in the presence of this deponent—That until the time when the said George West shewed this deponent the said paper, in the manner abovementioned, this deponent never did see or hear of the said paper, or any written

written order whatever from captain Talbot concerning the brig Betsey, neither from the said George West, Isaac Church, nor captains Prole, Angus, Thomson, nor any other person whatsoever—That this deponent, at none of the times abovementioned, nor before, nor since, was not, nor is interested either in the vessels or cargoes of the brigs Achilles, Patty and Hibernia, or either of them—That this deponent has conversed with captain Silas Talbot, relative to the capture of the brig Betsey, and the said Silas Talbot declared to this deponent, that the brig Betsey was taken by the sloop Argo, the day before the brig Betsey was taken by the brigs Patty, Achilles and Hibernia, and this deponent doth further say, that he is in no wise interested in the event of this cause.

W—— D——.

SWORN to, this 1st of July, 1783,
before

FRAN. HOPKINSON.

W—— D—— being cross-examined on the part of the libellant saith, that during the action, he could not see any colours of either of the two vessels engaged—that the brig was under sail, but the sloop being astern, he cannot say whether she was under sail or not. That during the night after they lost sight of them, they hauled their course as high up as north-east and by east, in order to cut the vessels off from New-York; and had a fresh wind. That next day when they came up with the Betsey, captains Prole, of the Patty, and Thomson, of the Achilles, took out some cannon and stores from the Betsey. That Thomson took two six pounders with shot, and Prole took

took about 100 pounds of powder and some small arms, to the number of twelve or fourteen, and four or six ten gallon kegs of rum, and two coils of cordage, and they both took some match-rope.—That a particular account was taken of every article which they took from the Betsey. Deponent recollects nothing more being taken than what he has mentioned.—That Church was at first left on board the Betsey; but afterwards taken out, because M'Neal the prize-master was afraid of him.—That the Argo's people were all taken out of the Betsey except two or three, one of whom was a negro.—That he had heard a few days before they had sailed from Philadelphia a doctor at the coffee house relating, that the sloop Argo, a New England privateer, of which the doctor said he was the surgeon, had taken the Dublin Cutter, which, he said, was fitted out from New-York full of men of war's men; but cannot tell whether Thomson, Angus or Prole knew of this.—That he never heard of the Argo before.—That he never heard any cannon fired by the brig Betsey or sloop Argo after the time mentioned in the deposition, when he supposed the brig Betsey struck.—That they continued the course of north-east and by-east in the night after they first saw the brig and sloop until eleven o'clock, and then bore away about east south-east.—And further this deponent saith not.

W—— D——.

SWORN to, this 1st July, 1783,
before

FRAN. HOPKINSON.



EXHIBITS in the cause *Dean
and Others* against *John An-
gus*,

THE only exhibits on the part of the libellants were, a certified copy of the sentence of the High Court of Errors and Appeals, in the case of Silas Talbot against the owners of the brigs Achilles, Patty and Hibernia; a proof of the sums paid by the owners of the Hibernia in consequence of that decree; and the orders signed by Angus to O'Neal, the prize master put on board the brig Betsey, after she had been taken from Silas Talbot—In these words :

“ ORDERS for captn. William M'Neil to take charge of the brigantine Betsey (prize to the Patty, Achilles and Hibernia) and take her into Delaware, Chespeak, Boston or Eggharbour or Boston. If into Delaware, to apply to Mr. John Donalfon, mercht. in Philadelphia. If into Baltimore, to Mr. William Neil, mercht. If into Boston,

Boston, to Mr. William Erskin, mercht. but to get her if possible into Delaware, Eggharbour or Chespeak, for fear of the sloop Argo's falling in with you if you go to New England; but wherever you go, suffer no bulk to be broke until you write to and receive an answer from Mr. Donaldson. If you go to Philadelphia, stop and cast anchor at Christeen creek mouth, and to fire 3 guns. I beg of Mr. M'Neil to stand to the fwd. this night, and strive hard for Pha. If you get to Pha. apply likewise to Mr. Saml. & Thos. Morris in Co. the owners of the Achilles, and Dean, Purvines and Harbourson for the Hibernia, who is all equally concerned in the prize.

At sea, on board the briggin.

Patty, Sept. 7th, 1779.

JOHN PROLE,
GEORGE THOMSON,
JOHN ANGUS."

THE testimony in behalf of Angus, the respondent, was as follows—

THE failing orders of the owners of the Hibernia to captain Angus, in which the only passage, that had any reference to the present suit, was in these words :

———" WE advise you to keep company with the
" armed vessels bound to the eastward, as far as you think
" it prudent. And should they agree to cruise two or
" three weeks on our coast, you have our approbation in
" joining with them."——

Deposition

Deposition of GEORGE ELDREDGE.

BEFORE me, the subscriber, judge of the court of admiralty for the state of Pennsylvania, this 25th day of April, 1785, came GEORGE ELDREDGE, who, being duly sworn, did declare and say—That he was a mariner on board the brig *Hibernia*, captain John Angus commander, at the time that captains Prole and Thomson took the brig *Betsey*, bound from Montserrat to New York—That when the said brig *Betsey* was boarded by captains Prole and Thomson, the *Hibernia* was astern about five or six miles. When the *Hibernia* came up, captain Angus hailed the brig, and asked what she was; captain Prole answered, that she was a good prize, bound from Montserrat to New York. Captain Angus made answer, that if the brig was prize, the sloop must be one also—That captain Prole was on board the *Betsey* while this conversation passed.—Captain Angus asked, why one of their fast sailing brigs did not give chase to the sloop—They made answer, that they would not leave the prize till she was manned, and requested captain Angus to give chase.—That captain Angus gave orders accordingly to make sail and give chase, which was done; and after chasing two or three leagues, the *Hibernia* did not come up with the chase. Captain Angus then gave orders to leave off the chase—The two brigs commanded by Prole and Thomson laying too by the prize, did not bear down on capt. Angus, so that he was obliged to turn to windward up to captains Prole and Thomson—It was then near night—Capt. Prole sent his boat for two men to put on board the prize, which capt. Angus sent. And this deponent further

ther faith, No prisoners were received on board the Hibernia nor plunder of any kind, and that capt. Angus never had a further opportunity to speak to the brigs, they out-failed him so much. That this deponent was third mate and pilot on board the said brig Hibernia, at the time of taking the said brig Betsey.

THAT deponent knows nothing of capt. Angus signing orders to the prize master—That capt. Angus was not on board either of the other two brigs—That capt. Angus joined in the chase with the others before the brig Betsey was taken.

GEORGE ELDREDGE.

SWORN to, April the 25th, 1785,
before

FRAN. HOPKINSON.

Deposition of JOHN BRICE,

PERSONALLY appeared JOHN BRICE, mariner, a witness produced on the part of the respondent in this cause, and being duly sworn, deposeth and saith—That he was on board the brigantine Hibernia at the time that capt. Prole and capt. Thomson took the brig Betsey from Montferrat bound to New York—At the time they boarded her the Hibernia was astern about five or six miles—when we came up with the brig Betsey, capt. Angus hailed her and asked what she was, capt. Prole made answer, that she was a good prize from Montferrat bound to New York—Capt. Angus made answer, that if the brig was a prize the sloop must be one also, and asked capt. Prole why
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one of their fast sailing brigs did not give chase to the sloop—Capt. Prole made answer that he would not leave the prize until she was manned, and requested of capt. Angus to give chase to the sloop, which capt. Angus did, but, after chasing two or three leagues, found he could not come up with the sloop. Capt. Angus then gave orders to shorten sail and haul her wind to speak to the brigs, and in the evening we came up with them—the two brigs commanded by captains Prole and Thomson lying by the brig Betsey all the while. Capt. Prole sent his boat on board capt. Angus, and desired him to send two hands to go on board the brig Betsey—One of capt. Prole's people came out of the boat and handed capt. Angus a paper, which he signed, and gave to the man again—Capt. Angus sent two men in the boat.—That capt. Angus had none of his boats out, and that he did not receive any prisoner or any plunder of any kind from the brig Betsey—That the brigs parted with her that night, and outailed them so much, that they had it never in their power to speak to her again—And further deponent saith not.

THE said deponent being cross examined, saith, That he was first mate on board the Hibernia at the time above mentioned—That he knows not the contents of the paper signed by capt. Angus—that capt. Angus sent two men on board the Betsey—that he does not know the name but of one of them, which was *George*—that they were both of the crew of the Hibernia—that he did not hear any directions given to them by capt. Angus—that he heard no further conversation between capt. Prole and capt. Angus, than what he has mentioned—that he was so busy aboard the Hibernia, that he does not remember whether the Betsey had any colours; that he look'd upon it to
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be the captain's business to attend to that—that he does not recollect whether the sloop had any colours—that all three of the vessels chased for about two or three hours before the Betsey was taken—that the Betsey was taken some time between ten and twelve o'clock in the forenoon—that he had not seen her taken the day before; nor heard the firing the day before—that he is not sure whether it was the 2d, 3d, or 4th day after they left the Capes, that the Betsey was taken—that he cannot recollect whether they were becalmed about the mouth of the Cape—that he does not remember seeing any sail about the time of leaving the Cape, but saw several sail two or three days after—that he does not remember that any of the brigs did shape their course the night before taking the Betsey, so as to fall in with the Betsey or any other vessel—that capt. Angus sailed under American colours the whole time, both in chasing the sloop and the Betsey—that he is not sure, but thinks the other two brigs chased under American colours—that he did not see or hear any of them fire as they came up with the Betsey—that he does not remember whereabouts the Betsey was taken—that he believes, and understood, that she was sent to Philadelphia, and that he does not know the reason why she was not sent to New London, or any port in Connecticut.

JOHN BRICE.

SWORN to, May 11th, 1785,

before

FRAN. HOPKINSON.

Deposition

Deposition of JOHN M'GILL.

PERSONALLY appeared JOHN M'GILL, mariner, a witness produced on the part of the respondent in this cause, and, being duly sworn, deposeth and saith— That he was on board the brig Hibernia at the time that captain Prole and captain Thomson took the brig Betsey—that the Hibernia was about five or six miles astern at the time of the taking aforesaid—that the Betsey hove to till the Hibernia came up with her—that captain Prole was on board the Betsey when captain Angus came up with her—that captain Angus hailed her when he came up with her, and asked what she was, and captain Prole answered, that she was a fine prize—that captain Angus asked why one of their fast sailing brigs did not give chase to the sloop, for if one was a prize he was sure the other was—that captain Prole made answer, that he would not leave the brig till she was manned, and from that the Hibernia gave chase to the sloop for about an hour or two; but not being able to come up with her, the Hibernia hauled her wind and came up with the other brigs—that the Hibernia was a dull sailer; and that while captain Angus gave chase to the sloop the other vessels remained with the prize—When the Hibernia came up with captain Prole, Prole sent a boat on board the Hibernia—he supposes that the boat came from captain Prole or captain Thomson; but is not sure which—that he does not remember whether the Hibernia had any colours up during the chase—that a man from the boat came on board the Hibernia, but he does not know whether he brought any paper from Prole to Angus or not—that no

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prisoners

prisoners or goods were brought on board the Hibernia—that he does not remember their speaking with, or coming up with the brigs afterwards—And further saith not.

THE said deponent being cross-examined, saith, the Hibernia was a duller sailer than the other two brigs, which could sail a great deal faster than her—that the sloop Argo, when captain Angus began to chase her, was about three leagues distant from the Betsey—that he knows not the reason why captain Angus was sent in chase of the Argo while the other two remained behind—he does not know how long they chased the Betsey before she was taken—that he cannot say whether they had seen the Betsey the day before she was taken—that he cannot recollect whether it was two or three or four days after their leaving the Cape before the Betsey was taken—that he thinks that they saw a sail or two previous to the day of taking the Betsey, and that the Betsey might have been one of them, but does not know she was so—that he does not recollect seeing any colours on board the Betsey or the sloop during the chase—that the three brigs had all of them American colours up during the chase, and at the time of taking the Betsey, and that none of the brigs fired (that he either saw or heard) at the Betsey at all—that two of captain Angus's hands were sent on board the Betsey.

AFTER the deposition aforesaid, and cross-examination were read over to him, he says, that he remembers that the other two brigs were under American colours, but is not sure whether the Hibernia had any colours up; and also, being further examined, saith—that he was most of the time busy below deck, and had not an opportunity of observing the distance captain Angus was from the brigs commanded by Prole and Thomson previous to the time
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when the *Betsey* was taken—that he was a small boy on board the *Hibernia* at the time of taking the *Betsey* and one of her hands, and is now about twenty-three years old, and that he believes the *Hibernia* was to windward of captains Prole and Thomson during the chase, and that the three brigs chafed before the wind, the *Hibernia* being astern of the other two brigs.

JOHN M'GILL.

SWORN to, May 11th, 1785,
before

FRAN. HOPKINSON.

Deposition of GEORGE STOOTS.

GEORGE STOOTS, mariner, a witness produced in this cause on the part of the respondent, being duly sworn, deposeth and saith, That he entered on board the *Hibernia* with captain Angus—that after leaving the cape (but he cannot positively say whether it was two or three days) they saw the prize brig and a sloop, and captains Prole and Thomson—that before he went on board the prize, he heard she was from Montserrat for New York—that captain Angus hailed either Thomson or Prole, he cannot say which of them, and then he heard that she was from Montserrat—that captain Angus then gave chase to the sloop—that finding it impossible to come up with the sloop, he returned to the brigs—that it was almost night when they returned to the brigs, to the best of his knowledge—that either captain Thomson's or captain Prole's boat came
on

on board captain Angus, and carried the deponent and another of captain Angus's hands on board the prize—that captain Angus and the prize did not hail one another to his knowledge—that the prize when they came on board her was in the possession of one O'Neal or Neal, as prize master, who belonged either to captain Prole or Thomson—that he does not know of any prisoners or plunder brought on board captain Angus.

BEING cross-examined, he saith—he does not know whether capt. Angus had any colours up, and that the prize had none that he remembers—that at such a time as that sailors are generally busy on the gun-deck—that he knows nothing of any written orders to the prize-master—that he did not know what the sloop was—that he found on board the prize a boatswain or boatswain's mate belonging to the sloop—that it was soon after he came on board that he (the boatswain or boatswain's mate) told him he was such, and that he almost thinks that the said boatswain or boatswain's mate told him the sloop was the Argo— And further the deponent saith not.

his

GEORGE + STOOTS,

mark.

SWORN to, June 8th, 1785,

before

FRAN. HOPKINSON.

Deposition

Deposition of AARON ASHBRIDGE.

AARON ASHBRIDGE, a witness produced on the part of the respondent, being duly affirmed according to law, on his solemn affirmation doth declare and say— That he sailed on board the brigantine *Achilles*, captain Thomson, in company with captains Prole and Angus— that after being out of the Cape two or three days, they discovered, early in the morning, a brig and a sloop— that capt. Prole being appointed as a commodore, gave orders to give chase, which was done— Prole and Thomson came up with the chase about eleven o'clock— he supposes that capt. Angus was at that time four or five miles astern— that the two brigs lay alongside of her, and sent their boat aboard— when capt. Angus came up he enquired what she was— capt. Prole or capt. D—— (he does not know which of them) answered that she was good prize, from Montserrat bound to New York— capt. D. being a passenger on board, was sent aboard the brig— Capt. Angus told them if the brig was a good prize the sloop must be a good one also, and asked why one of the fast sailing brigs did not give chase— the reply they made was, they would not leave the brig till they saw her well manned, but desired him to give chase, which he did for about 2 or 3 leagues till he found he could not come up with the chase— he hauled his wind and beat up to the other brigs, but did not get up with them till the evening, just before dark, nor till Prole and Thomson had taken the hands out (he cannot say whether all or not) and put others in their place— Capt. Prole sent his boat aboard capt. Angus for a couple

ple of hands to man the brig, which the affirmant believes he sent—the prize brig stood to the southward bound to Philadelphia, and the other brigs to the eastward—that he never more heard of the prize.—Being asked whether they ever more heard of capt. Angus during the voyage, the affirmant answers he did not—that they steered one course, but the others soon run capt. Angus out of sight—that they saw him next morning from mast-head, but he does not recollect ever speaking to him again.

BEING cross examined, he says, that he was an adventurer on board capt. Thomson, who promised him certain privileges if he would go—that they did not stipulate for any wages; but that capt. Thomson having found him useful, gave him at Cadiz 6 Half Johannes—that the sloop and prize were in company when they gave chase—that he did not see the colours of the prize till they were almost up with her; when she carried English colours reversed—that they could not discover any colours the sloop had—at least the affirmant did not—that he supposes they were within about a league when the sloop left the prize—that it was fair weather that day, but it blew very fresh and there was a heavy sea going—that he does not know who made Prole commodore, but he believes they did it among themselves—that he remembers they held a consultation at Reedy island, but knows not what it was about—that he knows nothing of any orders given to the prize master, but that capt. Thomson said she was ordered to Philadelphia—that he thinks capt. Angus was about a league, or something less, perhaps about two miles behind the other brigs, when they began the chase—that he thinks they heard some guns the day before, but could not discover any thing, but directed their course towards the place they imagined it came from—that when he thought they heard a firing it was stark

stark calm, and capt. Angus was about two miles astern—
And further the affirmant saith not.

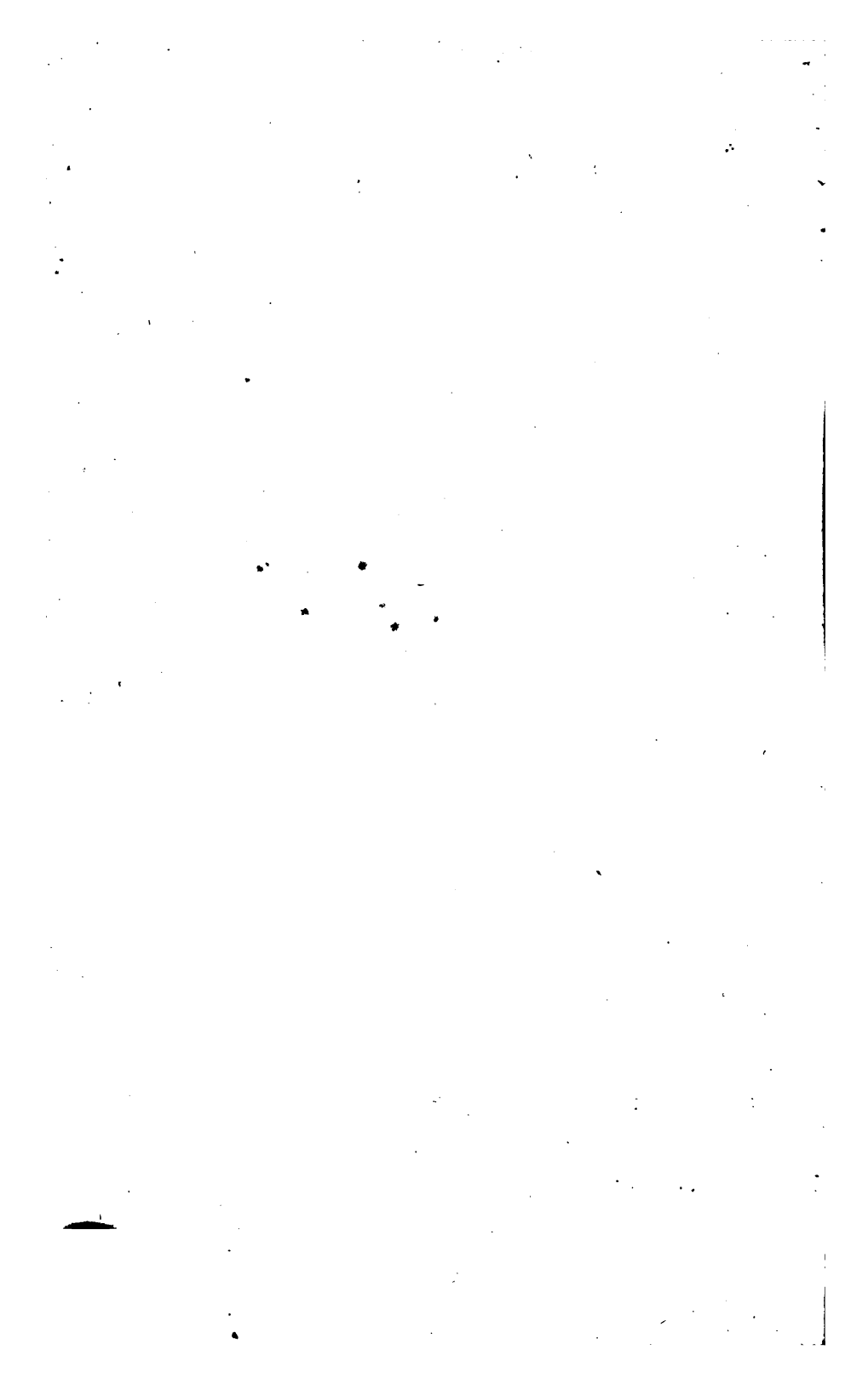
BEING further questioned, he says that the three brigs
chased the prize under continental colours, and that the
Hibernia also chased the sloop Argo under continental co-
lours.

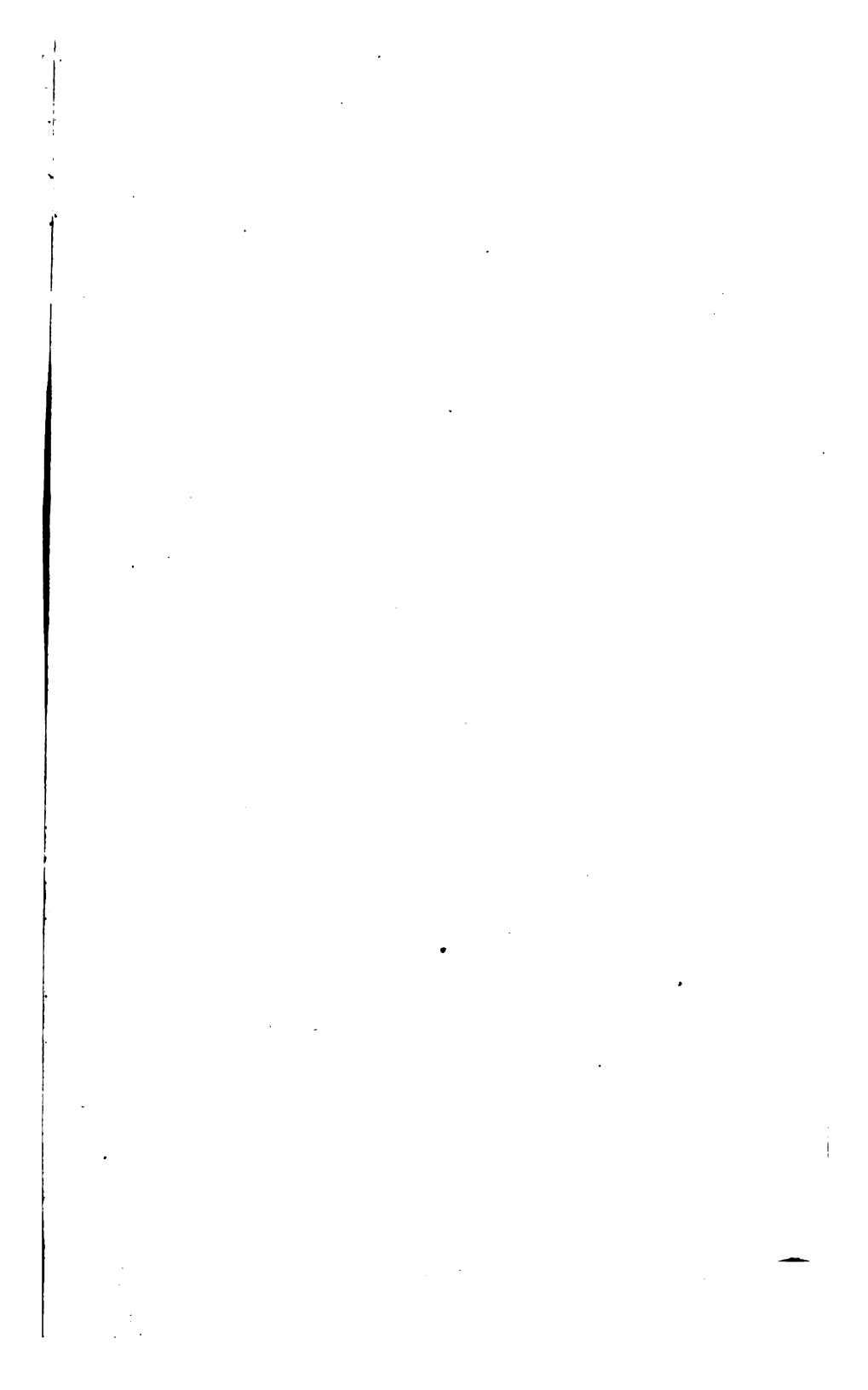
AARON ASHBRIDGE.

AFFIRMED June the 9th, 1785,
before

FRAN. HOPKINSON.

F I N I S.









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